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**FINAL**  
CITY COUNCIL  
CITY OF WICHITA  
KANSAS

City Council Meeting  
09:30 a.m. April 24, 2012

First Floor Board Room  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Approve the minutes of the regular meeting on April 17, 2012

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**II. CONSENT AGENDAS (ITEMS 1 THROUGH 15)**

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)*

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**COUNCIL AGENDA**

**VIII. COUNCIL MEMBER AGENDA**

1. Approval of travel expenses for Council Member Lavonta Williams to attend the NBC-LEO Summer Conference in New Orleans, LA, July 5-9, 2012.

RECOMMENDED ACTION: Approve the expenditures.

**IX. COUNCIL MEMBER APPOINTMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

\*\*\*Workshop to follow\*\*\*

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(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 15)

**II. CITY COUNCIL CONSENT AGENDA ITEMS**

1. Report of Board of Bids and Contracts dated April 23, 2012.

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

2. Applications for Special Event License:

| <u>Name</u>      | <u>2012</u>              | <u>Event Location</u>  |
|------------------|--------------------------|------------------------|
| Joseph E Schlimm | River Festival           | 225 West Douglas       |
| Joseph E Schlimm | River Festival West Bank | 220 North McClean Blvd |

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

| <u>Renewal</u> | <u>2012</u>             | <u>(Consumption off Premises)</u> |
|----------------|-------------------------|-----------------------------------|
| Phillip L Near | Jump Start Store Inc*** | 1535 East Pawnee                  |

\*\*\*Consumption/Retailer grocery stores, convenience stores etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

4. Preliminary Estimates: (See Attached)

RECOMMENDED ACTION: Receive and file.

5. Petitions for Public Improvements:

- a. Petitions for Street Paving, Storm Water Sewer and Water Distribution System in Krug South Addition, south of 21st Street North, west of 143rd Street East. (District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

6. Statement of Costs:

- a. List of Statement of Costs.

RECOMMENDED ACTION: Approve and file.

7. Agreements/Contracts:

- a. Hold Harmless Agreement, Easement Encroachment Hold Harmless and Covenant Agreement. (District VI)
- b. Hold Harmless Agreement, Easement Encroachment. (District IV)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

8. Minutes of Advisory Boards/Commissions

Wichita Transit Advisory Board, March, 9, 2012  
Wichita Historic Preservation Board, March 12, 2012  
Wichita Public Library, March 20, 2012  
Board of Electrical Appeals, March 13, 2012

RECOMMENDED ACTION: Receive and file.

9. Report on Claims for March, 2012.

RECOMMENDED ACTION: Receive and file.

10. Contract Amendment, YMCA Summer Youth Employment Program.

RECOMMENDED ACTION: Approve the contract amendment and authorize the necessary signatures.

11. Century II Renovations Project.

RECOMMENDED ACTION: Adopt the amending resolution and authorize the necessary signatures.

12. Payment for Settlement of Claim.

RECOMMENDED ACTION: Authorize payment of \$80,000 as full settlement of all possible claims arising out of the events which are the subject of this claim.

13. Second Reading Ordinances: (First Read April 17, 2012)

- a. List of Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## **II. CONSENT PLANNING AGENDA ITEMS**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

None

## **II. CONSENT HOUSING AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

None

## **II. CONSENT AIRPORT AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

14. **\*Grounds Maintenance Services - Wichita Mid-Continent Airport - Selection of Vendor.**

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

15. **\*License Agreement for Exterior Conduits and Duct Banks - New Cingular Wireless PCS, LLC - Wichita Mid-Continent Airport.**

RECOMMENDED ACTION: Approve the License Agreement and authorize the necessary signatures.

City of Wichita  
City Council Meeting  
April 24, 2012

**TO:** Mayor and City Council

**SUBJECT:** Petitions for Street Paving, Storm Water Sewer and Water Distribution System in Krug South Addition (south of 21st Street North, west of 143rd Street East) (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

-----  
**Recommendation:** Approve the new petitions.

**Background:** On August 18, 2009, the City Council approved petitions for street paving, storm water sewer and a water distribution system in Krug South Addition. The developer has submitted new petitions to reduce the projects to smaller phases due to current market conditions. The signature on the petitions represents 100% of the improvement districts.

**Analysis:** The projects will provide paving, storm water sewer and water system improvements for a new residential development located south of 21st Street North, west of 143rd Street East.

**Financial Considerations:** The existing petitions total \$1,455,000. The new petitions total \$476,000. The funding source is special assessments.

**Goal Impact:** The projects address the Efficient Infrastructure goal by providing paving, drainage and water system improvements required for a new residential development.

**Legal Considerations:** The Law Department has approved the petitions and resolutions as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the new petitions, adopt the resolutions and authorize the necessary signatures.

**Attachments:** Map, CIP sheets, petitions and resolutions.

**CAPITAL IMPROVEMENT  
PROJECT AUTHORIZATION  
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

☒

1. Prepare in triplicate

2. Send original & 2 copies to budget

3. City Manager to sign all copies.

4. File original w/ initiating resolution in City Clerk.

5. Return 2nd copy to initiating department

6. Send 3rd copy to Controller.

|   |  |                            |  |              |
|---|--|----------------------------|--|--------------|
| 1. Initiating Department  | 2. Initiating Division                       | 3. Date                    | 4. Project Description & Location                |              |
| Public Works & Utilities  | Eng. & Arch                                  | 3/28/2012                  | Water Distribution System in East South Addition |              |
| 5. CIP Project Number   | 6. Accounting Number                         | 7. CIP Project Date (Year) | 8. Approved by WCC Date                          |              |
| NI  |  | 2012                       |  |              |
| 9. Estimated Start Date<br>As Required                            | 10. Estimated Completion Date<br>As Required |                            | 11. Project Revised                              |              |
| 12. Project Cost Estimate   |  |                            | 12A.   |              |
| ITEM  | CO   | SA                         | OTHER*   | TOTAL        |
| Right of Way  |  |                            |  |              |
| Paving, grading & curbs   |  |                            |  |              |
| Bridge  |  |                            |  |              |
| Drainage  |  |                            |  |              |
| Sanitary Sewer  |  |                            |  |              |
| Sidewalk  |  |                            |  |              |
| Water   |  | \$20,000                   |  | \$20,000     |
| Traffic Signals & Turn Lanes                                      |  |                            |  |              |
| <b>Totals</b>   |  | \$75,000                   |  | \$75,000     |
| Total CIP Amount Budgeted   |  |                            |  |              |
| Total Prelim. Estimate  |  |                            |  |              |
| 13. Recommendation: Approve the petition and adopt the resolution |  |                            |  |              |
| Division Head   | Department Head                              |                            | Budget Officer                                   | City Manager |
|   |  |                            |  |              |
|   |  |                            | Date   | Date         |

|                   |       |       |
|-------------------|-------|-------|
|                   | Yes   | No    |
| Platting Required | _____ | _____ |
| Lot Split         | _____ | _____ |
| Petition          | X     | _____ |
| Ordered by WCC    | _____ | _____ |

| CAPITAL IMPROVEMENT<br>PROJECT AUTHORIZATION<br>CITY OF WICHITA   |                        |  |                                   | USE _____<br>To Initiate Project _____<br>To Revoke Project <u>  X  </u> |                   | 1. Prepare in duplicate<br>2. Send original & 2 copies to budget<br>3. City Manager to sign all copies<br>4. File original w/ initiating resolution in City Clerk<br>5. Return 2nd copy to initiating department<br>6. Send 3rd copy to Controller. |    |
|---|------------------------|--|-----------------------------------|--|-------------------|---|----|
| 1. Initiating Department  | 2. Initiating Division | 3. Date                                      | 4. Project Description & Location |  |                   |   |    |
| Public Works & Utilities  | Eng & Arch             | 10/6/2012                                    | Paving on King North Addition     |  |                   |   |    |
| 5. CIP Project Number   | 6. Accounting Number   | 7. CIP Project Date (Year)                   | 8. Approved by WCC Item           |  |                   |   |    |
|   |                        | 2012   |                                   |  |                   |   |    |
| 9. Estimated Start Date<br>As Required                            |                        | 10. Estimated Completion Date<br>As Required |                                   | 11. Project Rerated  |                   |   |    |
| 12. Project Cost Estimate   |                        |  |                                   | 12A.   |                   |   |    |
| ITEM  | GO                     | SA   | EDOT                              | TOTAL  |                   | Yes   | No |
| Right of Way  |                        |  |                                   |  | Planting Required |   |    |
| Paving, grading & curbs   | \$100,000              |  |                                   | \$100,000  | Lav Spill         |   |    |
| Bridge  |                        |  |                                   |  | Petition          | X   |    |
| Drainage  |                        |  |                                   |  | Ordered by WCC    |   |    |
| Sanitary Sewer  |                        |  |                                   |  | Remarks :         |   |    |
| Stormwater  |                        |  |                                   |  |                   |   |    |
| Water   |                        |  |                                   |  |                   |   |    |
| Traffic Signals & Turn Lanes                                      |                        |  |                                   |  |                   |   |    |
| Totals  | \$100,000              |  |                                   | \$100,000  | 472-84522         |   |    |
| Total CIP Amount Budgeted   |                        |  |                                   |  |                   |   |    |
| Total Prelim. Estimate  |                        |  |                                   |  |                   |   |    |
| 13. Recommendation: Approve the petition and adopt the resolution |                        |  |                                   |  |                   |   |    |
| Division Head   |                        | Department Head                              |                                   | Budget Officer   |                   | City Manager  |    |
|   |                        |  |                                   |  |                   |   |    |
|   |                        |  |                                   | Date   |                   | Date  |    |



**CAPITAL IMPROVEMENT  
PROJECT AUTHORIZATION  
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

a

1. Prepare in triplicate.

2. Send original & 2 copies to budget.

3. City Manager to sign all copies.

4. File original w/ initiating resolution in City Clerk.

5. Return 2nd copy to initiating department.

6. Send 3rd copy to Controller.

|  |  |                            |  |           |
|--|--|----------------------------|--|-----------|
| 1. Initiating Department                 | 2. Initiating Division                         | 3. Date                    | 4. Project Description & Location      |           |
| Public Works & Utilities                 | Eng & Dev                                      | 3/28/2012                  | Storm Water Sewers King South Addition |           |
| 5. CIP Project Number                    | 6. Accounting Number                           | 7. CIP Project Date (Year) | 8. Approved by WCC Date                |           |
| NI-                                      |  | 2012                       |  |           |
| 9. Estimated Start Date<br>(As Required) | 10. Estimated Completion Date<br>(As Required) | 11. Project Revised        |  |           |
| 12. Project Cost Estimate                |  |                            | 12A.                                   |           |
| ITEM                                     | CO   | SA                         | Other                                  | TOTAL     |
| Right of Way                             |  |                            |  |           |
| Paving, grading & curbs.                 |  |                            |  |           |
| Bridge & Dam                             |  |                            |  |           |
| Drainage                                 |  |                            |  |           |
| Storm Water Sewer                        |  | \$100,000                  |  | \$100,000 |
| Sidewalk                                 |  |                            |  |           |
| Water                                    |  |                            |  |           |
| Traffic Signals & Turn Lanes             |  |                            |  |           |
| <b>Totals</b>                            |  | \$100,000                  |  | \$100,000 |
| Total CIP Amount Budgeted                |  |                            |  |           |
| Total Prelim. Estimate                   |  |                            |  |           |

13. Recommendation: Approve the Petition and adopt the Resolution.

|               |                 |                |              |
|---------------|-----------------|----------------|--------------|
| Division Head | Department Head | Budget Officer | City Manager |
|               |                 |                |              |
|               |                 | Date           | Date         |

|                   |       |       |
|-------------------|-------|-------|
|                   | Yes   | No    |
| Platting Required | _____ | _____ |
| Lot Split         | _____ | _____ |
| Petition          | X     | _____ |
| Ordered by WCC    | _____ | _____ |

Remarks:

100% Point to

"Storm Water Utility

SWE 664

168 N172A

First Published in the Wichita Eagle on April 27, 2012

RESOLUTION NO. 12-083

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 629 (SOUTH OF 21ST, WEST OF 143RD ST EAST) 468-84326 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 629 (SOUTH OF 21ST, WEST OF 143RD ST EAST) 468-84326 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-123 adopted on February 13, 2007 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to improve Storm Water Sewer No. 629 (south of 21st, west of 143rd St. East) 468-84326.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be One Hundred Thousand Dollars (\$100,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after March 1, 2012, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

KRUG SOUTH ADDITION  
Lots 40 through 60, Block 2  
Lots 5 through 9, Block 4

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis:

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; KRUG SOUTH ADDITION, shall each pay 1/26 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided

shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED the governing body of the City of Wichita, Kansas, this 24th day of April, 2012

---

CARL BREWER, MAYOR

ATTEST:

---

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FROM:

---

GARY E. REBENSTORF  
DIRECTOR OF LAW

First Published in the Wichita Eagle on April 27, 2012

RESOLUTION NO. 12-084

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON BURNING TREE COURT, FROM THE SOUTH LINE OF LOT 61, BLOCK 2, SERVING LOTS 47 THROUGH 60, BLOCK 2, TO AND INCLUDING THE CUL-DE-SAC; PAVING ROCKHILL, FROM THE EAST LINE OF BURNING TREE CIRCLE TO THE NORTH LINE OF LOT 9, BLOCK 4 (SOUTH OF 21ST, WEST OF 143RD ST. EAST) 472-84522 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON BURNING TREE COURT, FROM THE SOUTH LINE OF LOT 61, BLOCK 2, SERVING LOTS 47 THROUGH 60, BLOCK 2, TO AND INCLUDING THE CUL-DE-SAC; PAVING ROCKHILL, FROM THE EAST LINE OF BURNING TREE CIRCLE TO THE NORTH LINE OF LOT 9, BLOCK 4 (SOUTH OF 21ST, WEST OF 143RD ST. EAST) 472-84522 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-127 adopted on February 13, 2007 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Burning Tree Court, from the south line of Lot 61, Block 2, serving Lots 47 through 60, Block 2, to and including the cul-de-sac; paving Rockhill, from the east line of Burning Tree Circle to the north line of Lot 9, Block 4 (south of 21st, west of 143rd St. East) 472-84522.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Three Hundred One Thousand Dollars (\$301,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after March 1, 2012 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

KRUG SOUTH ADDITION  
Lots 40 through 60, Block 2  
Lots 5 through 9, Block 4

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis. The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4 KRUG SOUTH ADDITION, shall each pay 1/26 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of Wichita, Kansas, this 24th day of April, 2012.

---

CARL BREWER, MAYOR

ATTEST:

---

KAREN SUBLETT, CITY CLERK  
(SEAL)

APPROVED AS TO FORM:

---

GARY E REBENSTORF  
DIRECTOR OF LAW

First Published in the Wichita Eagle on April 27, 2012

RESOLUTION NO. 12-085

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90278 (SOUTH OF 21ST, WEST OF 143RD ST. EAST) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90278 (SOUTH OF 21ST, WEST OF 143RD ST. EAST) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 01-117 adopted on February 13, 2007 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct Water Distribution System Number 448-90278 (south of 21st, west of 143rd St. East).

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be Seventy-Five Thousand Dollars (\$75,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after March 1, 2012, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

KRUG SOUTH ADDITION  
Lots 40 through 60, Block 2  
Lots 5 through 9, Block 4

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; KRUG SOUTH ADDITION, shall each pay 1/26 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be

recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas this 24th day of

April, 2012.

---

CARL BREWER, MAYOR

ATTEST:

---

KAREN SUBLETT, CITY CLERK  
(SEAL)

APPROVED AS TO FORM:

---

GARY E. REBENSTORF  
DIRECTOR OF LAW



RECEIVED

MAR 19 '12

**WATER DISTRIBUTION SYSTEM PETITION**  
**PHASE 2**

**CITY CLERK OFFICE**

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

**KRUG SOUTH ADDITION**

Lots 40 through 60, Block 2;

Lots 5 through 9, Block 4;

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- 448-90278  
(South of 21<sup>st</sup> St. N,  
West of 143<sup>rd</sup> St. E)  
District II
- (a) That there be constructed a water distribution system including necessary water mains, pipes, valves, hydrants, and appurtenances to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

- (b) That the estimated and probable cost of the foregoing improvements is Seventy Five Thousand Dollars (\$75,000.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after March 1, 2012.

- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis. The

Krug South Addition – Water Distribution System Phase 2 Petition

GJA/kda 05291 - REPETITION #1 448-90278

Page 1

fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; Krug South Addition shall each pay 1/26 of the total cost payable by the improvement district

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. The petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04, and amendments thereto and as owners of 100% of the properties proposed to be included in the improvement district, we acknowledge that the proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvement.

4. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

5. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

| LEGAL DESCRIPTION | SIGNATURE | DATE |
|-------------------|-----------|------|
|-------------------|-----------|------|

**KRUG SOUTH ADDITION**

Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; Krug South Addition, an addition to Wichita, Sedgwick County, Kansas.

**KRUG SOUTH RESIDENTIAL, LLC**  
**RITCHIE DEVELOPMENT CORPORATION-**  
**Manager**

By: 

Terry D. Rhea, Vice President  
Ritchie Development Corporation

# AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presences of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

MKEC Engineering Consultants, Inc.  
Company

*Keith D. Ayatto*  
Authorized Signature

411 N. Webb Road

Wichita, Kansas  
Address

316-684-9600  
Telephone

Sworn to and subscribed before me this

19<sup>th</sup> day of March 2012



*John Edwards, CMU*  
Deputy City Clerk

**KRUG SOUTH ADDITION  
WATER DISTRIBUTION SYSTEM PHASE 2 PETITION  
COST ESTIMATE**

| Item No.                                     | Description             | Quantity | Unit | Unit Price  | Extension           |
|--|-------------------------|----------|------|-------------|---------------------|
| 1  | 8" Waterline            | 1720     | LF   | \$ 20.00    | \$ 34,400.00        |
| 2  | 8" Valves               | 3        | EA   | \$ 1,000.00 | \$ 3,000.00         |
| 3  | Hydrants                | 4        | LF   | \$ 3,000.00 | \$ 12,000.00        |
| 4  | Blowoffs                | 2        | EA   | \$ 600.00   | \$ 1,200.00         |
| 5  | Contingencies @ 10% +/- | 1        | LS   | \$ 5,060.00 | \$ 5,060.00         |
| <b>Construction Total</b>                    |                         |          |      |             | <b>\$ 55,660.00</b> |
| <b>35% Engineering, Administration, Etc.</b> |                         |          |      |             | <b>\$ 19,481.00</b> |
| <b>TOTAL</b>                                 |                         |          |      |             | <b>\$ 75,141.00</b> |

**For Petition Use \$75,000.00**

RECEIVED

MAR 19 '12

PAVING PETITION  
PHASE 2

CITY CLERK OFFICE

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

KRUG SOUTH ADDITION

Lots 40 through 60, Block 2;  
Lots 5 through 9, Block 4;

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- 472-84522  
(South of 21st St. N,  
West of 143rd St. E)  
District II
- (a) That there be constructed within the area described above, pavement on Burning Tree Court, from the south line of Lot 61, Block 2, serving Lots 47 through 60, Block 2, to and including the cul-de-sac; Paving Rockhill, from the east line of Burning Tree Circle to the north line of Lot 9, Block 4. That said pavement between aforesaid limits be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.
  - (b) That the estimated and probable cost of the foregoing improvement is Three Hundred One Thousand Dollars (\$301,000.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after March 1, 2012.
  - (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign,

repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis. The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; Krug South Addition shall each pay 1/26 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

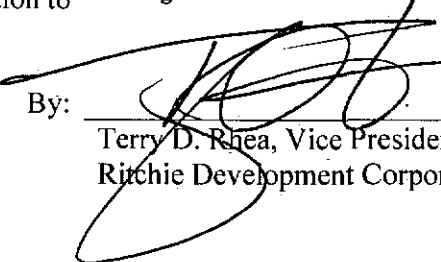
2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. The petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04, and amendments thereto and as owners of 100% of the properties proposed to be included in the improvement district, we acknowledge that the proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvement.

4. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

5. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

| LEGAL DESCRIPTION  | SIGNATURE   | DATE |
|--|---|------|
| <b><u>KRUG SOUTH ADDITION</u></b><br>Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; Krug South Addition, an addition to Wichita, Sedgwick County, Kansas. | <b>KRUG SOUTH RESIDENTIAL, LLC</b><br><b>RITCHIE DEVELOPMENT CORPORATION-</b><br><b>Manager</b><br> |      |
|  | By: _____<br>Terry D. Rhea, Vice President<br>Ritchie Development Corporation   |      |



AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presences of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

MKEC Engineering Consultants, Inc.  
Company

*Kirk P. Gatto*  
Authorized Signature

411 N. Webb Road

Wichita, Kansas  
Address

316-684-9600  
Telephone

Sworn to and subscribed before me this 19<sup>th</sup> day of March 2012.



*Jim Edwards, CM*  
Deputy City Clerk

**KRUG SOUTH ADDITION  
PAVING PHASE 2 PETITION  
COST ESTIMATE**

| Item No.                                     | Description             | Quantity | Unit | Unit Price   | Extension            |
|--|-------------------------|----------|------|--------------|----------------------|
| 1  | Pavement                | 4470     | SY   | \$ 18.00     | \$ 80,460.00         |
| 2  | Comb Curb and Gutter    | 3210     | LF   | \$ 14.00     | \$ 44,940.00         |
| 3  | Base Coarse             | 5640     | SY   | \$ 8.00      | \$ 45,120.00         |
| 5  | Sidewalk                | 10710    | SF   | \$ 3.00      | \$ 32,130.00         |
| 3  | Contingencies @ 10% +/- | 1        | LS   | \$ 20,265.00 | \$ 20,265.00         |
| <b>Construction Total</b>                    |                         |          |      |              | <b>\$ 222,915.00</b> |
| <b>35% Engineering, Administration, Etc.</b> |                         |          |      |              | <b>\$ 78,020.25</b>  |
| <b>TOTAL</b>                                 |                         |          |      |              | <b>\$ 300,935.25</b> |

**For Petition Use \$301,000.00**

RECEIVED

MAR 19 '12

**STORM WATER SEWER PETITION**  
**PHASE 2**

**CITY CLERK OFFICE**

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

**KRUG SOUTH ADDITION**

Lots 40 through 60, Block 2;

Lots 5 through 9, Block 4;

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

(a) That there be constructed a storm water sewer system to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

(b) That the estimated and probable cost of the foregoing improvements is One Hundred Thousand Dollars (\$100,000.00), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after March 1, 2012.

(c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis. The

SWS# 629

468-84326

(South of 21st St. N,  
West of 143rd St. E)

District II

fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; Krug South Addition shall each pay 1/26 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.
- (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.
3. The petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04, and amendments thereto and as owners of 100% of the properties proposed to be included in the improvement district, we acknowledge that the proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvement.
4. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.
5. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

---

LEGAL DESCRIPTION

SIGNATURE

DATE

**KRUG SOUTH ADDITION**

Lots 40 through 60, Block 2; and Lots 5 through 9, Block 4; Krug South Addition, an addition to Wichita, Sedgwick County, Kansas.

**KRUG SOUTH RESIDENTIAL, LLC**  
**RITCHIE DEVELOPMENT CORPORATION-**  
**Manager**

By: 

Terry D. Rhea, Vice President  
Ritchie Development Corporation

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presences of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

MKEC Engineering Consultants, Inc.  
Company

*Kurt R. Agathis*  
Authorized Signature

411 N. Webb Road

Wichita, Kansas  
Address

316-684-9600  
Telephone

Sworn to and subscribed before me this

19<sup>th</sup> day of March 20 12



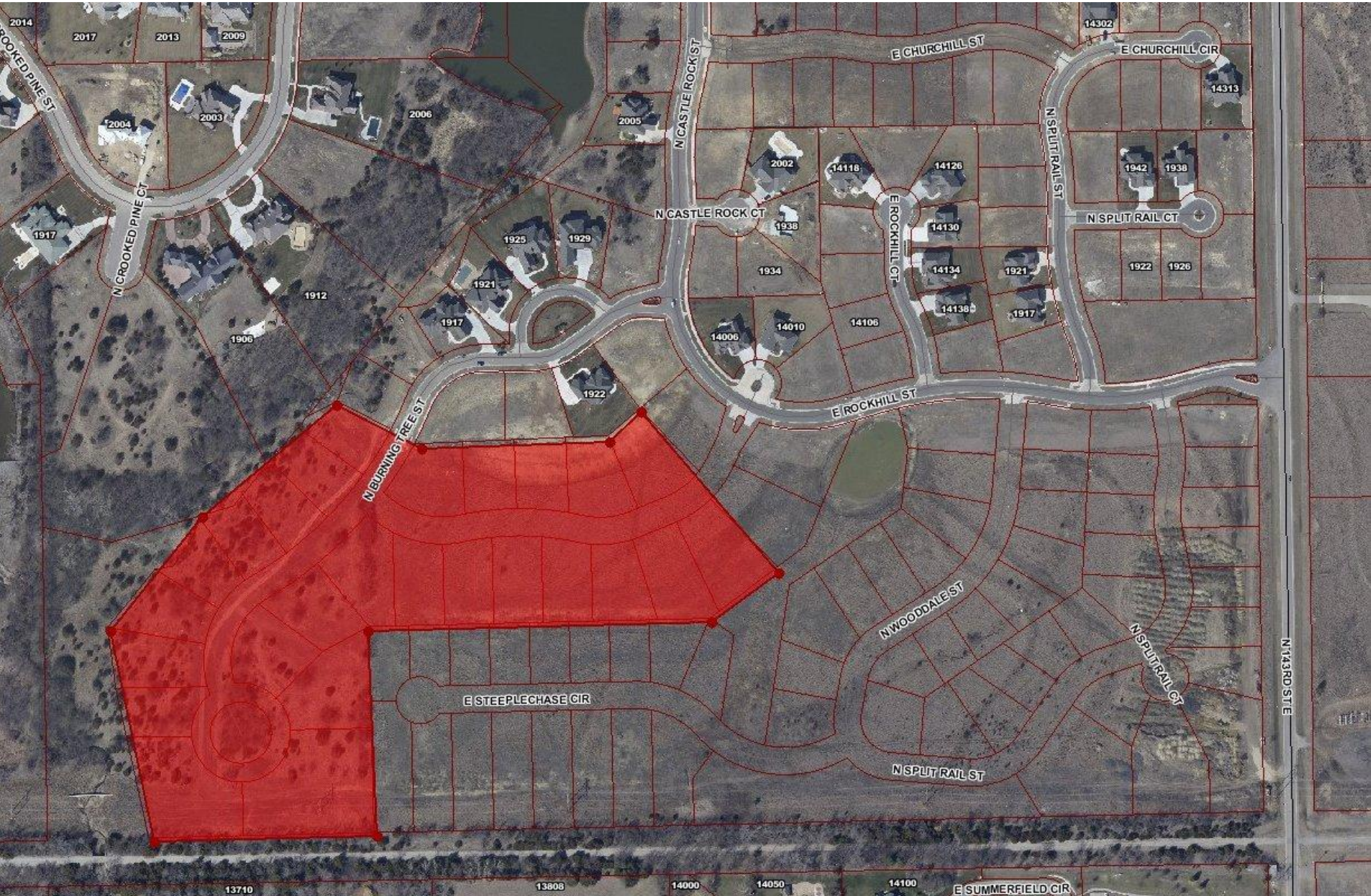
*James Edwards CMC*  
Deputy City Clerk

**KRUG SOUTH ADDITION  
STORM WATER SEWER PHASE 2 PETITION  
COST ESTIMATE**

| Item No.                                     | Description             | Quantity | Unit | Unit Price  | Extension           |
|--|-------------------------|----------|------|-------------|---------------------|
| 1  | 30" SWS                 | 250      | LF   | \$ 70.00    | \$ 17,500.00        |
| 2  | 24" SWS                 | 305      | LF   | \$ 50.00    | \$ 15,250.00        |
| 3  | 18" SWS                 | 230      | LF   | \$ 40.00    | \$ 9,200.00         |
| 4  | 12" SWS                 | 250      | LF   | \$ 25.00    | \$ 6,250.00         |
| 5  | Curb Inlets             | 2        | EA   | \$ 3,500.00 | \$ 7,000.00         |
| 6  | Area Inlets             | 3        | EA   | \$ 2,500.00 | \$ 7,500.00         |
| 7  | Flowable Fill           | 70       | LF   | \$ 50.00    | \$ 3,500.00         |
| 8  | Rip Rap                 | 20       | SY   | \$ 50.00    | \$ 1,000.00         |
| 9  | Contingencies @ 10% +/- | 1        | LS   | \$ 6,720.00 | \$ 6,720.00         |
| <b>Construction Total</b>                    |                         |          |      |             | <b>\$ 73,920.00</b> |
| <b>35% Engineering, Administration, Etc.</b> |                         |          |      |             | <b>\$ 25,872.00</b> |
| <b>TOTAL</b>                                 |                         |          |      |             | <b>\$ 99,792.00</b> |

**For Petition Use \$100,000.00**







#### STATEMENTS OF COSTS:

- a. Statement of Cost for improving **37<sup>th</sup> Street North, Tyler to Ridge** – Total Cost - \$5,262,927.83; plus temporary note interest - \$27,000.71; less idle fund interest - \$75,549.89; less KDOT reimbursements - \$3,463,902.83; less financing from interfund transfers - \$715,000.00; less transfers in - \$1,163,000.00; less financing previously issued - \$11,000.00. Financing to be issued at this time - \$74,200.00 (706920/472-84186/205386).
- b. Statement of Cost for improving **Central & Tyler** – Total Cost - \$2,886,534.74; plus temporary note interest - \$16,294.63; less idle fund interest - \$1,997.63; less KDOT reimbursements - \$799,500.00; less financing from interfund transfers - \$1,000,000; less transfers in - \$561,327; less financing previously issued - \$503,000.00. Financing to be issued at this time - \$41,000.00 (706974/472-84655/208440).
- c. Statement of Cost for improving **25th Street Bridge over Little Arkansas River** – Total Cost - \$1,145,936.12; plus temporary note interest - \$146.04; less idle fund interest - \$490.74; less KDOT reimbursements - \$836,891.42; less financing previously issued - \$246,700.00. Financing to be issued at this time - \$62,000.00 (715715/472-84595/247131).

#### PARTIAL STATEMENTS OF COST:

- d. Partial Estimate of Cost for improving **135th Street West, 13<sup>th</sup> to 21<sup>st</sup> Street North (Deisgn)** – Total Cost - \$629,718; less financing previously issued - \$127,043. Financing to be issued at this time - \$502,675. (707021/472-84925/210-486).

City of Wichita  
City Council Meeting  
April 24, 2012

**TO:** Mayor and City Council

**SUBJECT:** Hold Harmless Agreement (Easement Encroachment)  
Hold Harmless and Covenant Agreement (District VI)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the agreements.

**Background:** As part of the Metropolitan Area Planning Commission Vacation Case No. 2011-00028, the Nomar Self Storage, located at 2505 North Market, has vacated a 14 foot alley in the block between Park Place and Market, north of 24<sup>th</sup> Street North. Per standard procedure, the vacated alley is now an easement to cover existing utilities. In lieu of dedicating an additional six feet of easement to meet standard requirements for a 20 foot wide easement, the City Council agreed on February 14, 2012, to accept a separate agreement between the owner and the City to allow the owner full use of the adjacent six feet, yet hold the City harmless if anything was damaged within the six feet during any work performed within the 14 foot easement.

**Analysis:** The hold harmless agreement was necessary to cover existing encroachments within the 14 foot easement. The hold harmless and covenant agreement was written to cover the mutual agreement for the adjacent six feet of land. Both agreements allow the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of the public sewer line, and from claims resulting from replacement or upgrade of lines, manholes, and/or other City property in the easement. Nomar Self Storage LLC, waives all rights of action in law arising out of the encroachments into the 14 foot easement and the adjacent 6 feet of land.

**Financial Considerations:** There is no cost to the City.

**Goal Impact:** Both agreements address the Ensure Efficient Infrastructure goal by maintaining and protecting the sanitary sewer system.

**Legal Considerations:** The Law Department has approved the agreements as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the agreements and authorize the necessary signatures.

**Attachments:** Hold harmless agreement and hold harmless and covenant agreement.

### HOLD HARMLESS - COVENANT AGREEMENT

THIS AGREEMENT made this 21<sup>st</sup> day of March, 2012, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND J. Elizabeth Heflin and Daniel G. Heflin hereinafter called "OWNER"

WITNESSETH: the Owner has received approval from the appropriate government authorities for the vacation of that part of the platted 14-foot wide alley that abuts the east side of Lots 42, 44, 46 & 48, on Main Street (now Park Place Street) Garland Brook Addition. As a condition of the vacation, Owner has dedicated the said 14 foot vacated alley as a Drainage and Utility Easement. As an additional condition of the vacation, the City of Wichita City Council and the Owner have agreed to a Hold Harmless Covenant Agreement, pertaining to a 6 foot strip of land running parallel to and adjacent to the west side of said 14 foot wide easement, also being the east 6-feet of Lots 42, 44, 46 & 48, on Main Street (now Park Place Street), Garland Brook Addition. (Reference Metropolitan Area Planning Commission Vacation Case # 2011-00028)

and

WHEREAS, the Owner desires to occupy and construct privately owned and maintained improvements over said 6 feet of land, to wit; an existing concrete retaining wall 8 inches wide by 2 feet tall and approx 6 feet long with a 6 feet tall chainlink fence atop, at the north line of Lot 42, Garland Brook Addition; and other appurtenances approved to date for a proposed self-storage facility, hereinafter referred to as **Tract "A"** (see attached).

NOW THEREFORE, in consideration of the vacation and the several mutual and reciprocal promises of the parties, it is agreed as follows:

- (1) The Owner does hereby grant access by the City of Wichita to the 6 feet wide area of private property that is adjacent to the 14 foot easement (former alley), for purposes of repair, replacement, maintenance, operation, abandonment, or removal of the sewer line in said 14 foot easement area, and without liability to the City of Wichita. The Owner hereby releases the City from any and all claims the Owner may have for property damage or personal injury caused by the presence of or work performed by the City, or its employees, agents and contractors, while accessing the sewer line in the 14 foot easement, whether the damage or injury occurred within the 14 foot easement or the 6 foot area described above.
- (2) The Owner agrees to indemnify and hold harmless the City, within Kansas statutes, from any and all claims for personal injury and/or property damage resulting from the presence or failure of any wall, fence or structure within Tract "A".
- (3) Public utilities will remain within the 14 foot easement. The City will not construct or relocate the sewer line outside of the 14 foot easement.
- (4) This agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement. This agreement can be renegotiated upon approval by both parties.
- (5) The provisions contained herein shall be binding upon the undersigned, their successors and assigns, and shall run with the land, so long as any structure(s) contemplated by this agreement are in existence.
- (6) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

Daniel G. Heflin  
Daniel G. Heflin, Owner

J. Elizabeth Heflin  
J. Elizabeth Heflin, Owner

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 21<sup>st</sup> day of March, 2012, before me, a Notary Public, in and fore said county and state, came Daniel G. Heflin, to me personally known to be the same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Toni L. Schaal  
Notary Public  
My Commission Expires: 8/26/14



STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 21<sup>st</sup> day of March, 2012, before me, a Notary Public, in and fore said county and state, came J. Elizabeth Heflin, to me personally known to be the same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Toni L. Schaal  
Notary Public  
My Commission Expires: 8/26/14



**CITY OF WICHITA, KANSAS**

By \_\_\_\_\_  
Carl Brewer, Mayor  
City

ATTEST:

\_\_\_\_\_  
City Clerk

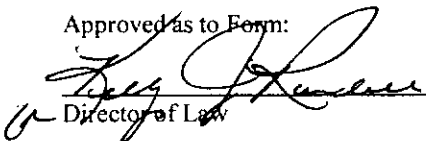
STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

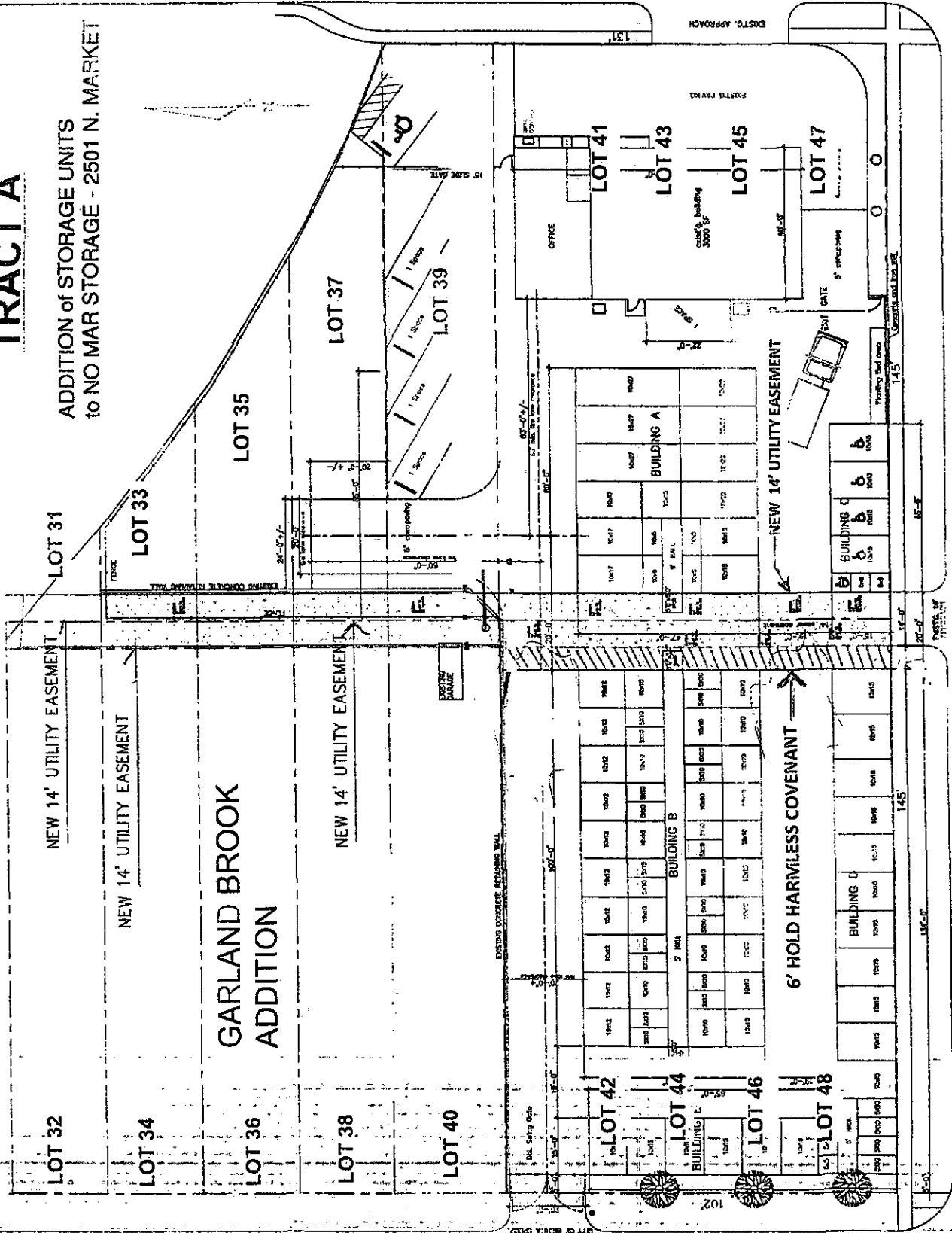
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
Director of Law

# TRACT A

ADDITION of STORAGE UNITS  
to NO MAR STORAGE - 2501 N. MARKET



24th Street North

### HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this 30<sup>th</sup> day of January, 2012, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND J. Elizabeth Heflin and Daniel G. Heflin hereinafter called "OWNER"

WITNESSETH:

Whereas, through an Alley Vacation Case #2011-00028 with the Metropolitan Area Planning Commission, the public has been granted a 14 foot wide easement, adjoining lots 41 through 48 inclusive, of the Garland Brook Addition. In addition, the public has been granted a 14 foot wide easement, adjoining Lots 31 through 40 inclusive, of the Garland Brook Addition.

and

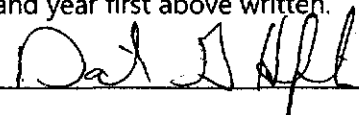
WHEREAS, the Owner desires to occupy and construct privately owned and maintained improvements over the following described section of said easement, to wit; a concrete retaining wall 8 inches wide by 2 feet tall and approx 14 feet long with a 6 feet tall chainlink fence atop at Lot 40 and 39 of stated addition; a 12 inch "beehive" type inlet drain connected to a 12 inch PVC pipe, whereas the PVC pipe shall run easterly across the easement area from Lot 40 to 39 of stated addition and be approx. 14 feet long; other appurtenances approved to date for a proposed self-storage facility, hereinafter referred to as **Tract "A"** (see attached drawing showing proposed encroachment and location).

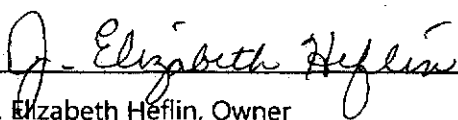
NOW THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

- (1) The City hereby agrees to permit the Owner to occupy and construct improvements on, over and across the aforesaid utility easement, and specifically waives any and all rights of action in law or equity against Owner, arising out of the Owner's occupancy and encroachment on and over said easement, except as provided herein.
- (2) The Owner agrees that it will not begin construction of improvements, on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvements.

- (3) In the event that a sanitary sewer line or other public structure within the above described utility easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the Owner shall be obligated to either (a) pay the costs to replace that portion of the structure within such encroachment; (b) remove the said encroachment and clear the said easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the structure.
- (4) The Owner agrees to protect and indemnify the City and adjacent property owners against any increased cost that may accrue to the City and adjacent property owners due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In the event the Owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.
- (5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage growing out of the construction, mainenanct, operation, relocation, abandonment, leaking, cave-in or failure of that portion of said structure within Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner hereby releases the City from any and all claims that it might have for property damage or personal injury caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the structure within the above described easement.
- (6) This agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement.
- (7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structure contemplated by this agreement is in existence.
- (8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

  
Daniel G. Hefflin, Owner

  
J. Elizabeth Hefflin, Owner



STATE OF KANSAS, SEDGWICK COUNTY, ss:

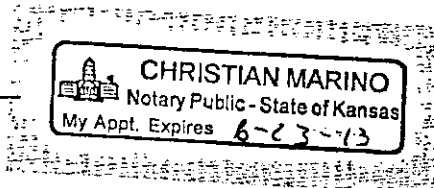
BE IT REMEMBERED, that on this 30<sup>th</sup> day of January, 2012, before me, a Notary Public, in and fore said county and state, came Daniel G. Heflin, to me personally known to be the same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.



Notary Public

My Commission Expires: 6-23-13



STATE OF KANSAS, SEDGWICK COUNTY, ss:

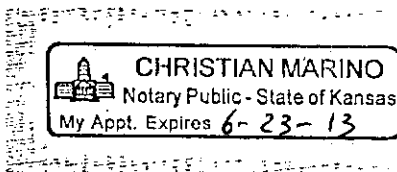
BE IT REMEMBERED, that on this 30<sup>th</sup> day of January, 2012, before me, a Notary Public, in and fore said county and state, came J. Elizabeth Heflin, to me personally known to be the same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.



Notary Public

My Commission Expires: 6-23-13



**CITY OF WICHITA, KANSAS**

By \_\_\_\_\_  
Carl Brewer, Mayor  
City

ATTEST:

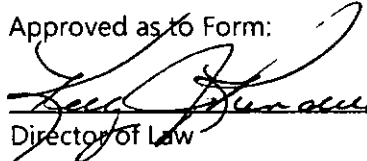
\_\_\_\_\_  
City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Approved as to Form:  
  
\_\_\_\_\_  
Director of Law

[illegible]

# TRACT A

ADDITION of STORAGE UNITS  
to NO MAR STORAGE - 2501 N. MARKET

The site plan for Tract A illustrates the proposed addition of storage units to the existing No. Mar Storage facility. The plan is bounded by a north-south street on the left and an east-west street on the top. Key features include:

- Lots:** Lots 31 through 48 are delineated. Lots 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48 are shown with their respective dimensions and areas.
- Buildings:** Buildings A, B, C, and E are shown with their respective dimensions and areas. Building A is a large rectangular structure, while Buildings B, C, and E are smaller, more irregular structures.
- Parking:** Several parking areas are shown, including a large parking area in the center-right and smaller parking areas near the buildings.
- Utility Easements:** Four new 14' utility easements are shown, running parallel to the north-south street and the east-west street.
- Other Features:** The plan also shows a north arrow, a scale bar, and various other details such as walls, fences, and landscaping.

# TRACT A

ADDITION of STORAGE UNITS  
to NO MAR STORAGE - 2501 N. MARKET

The site plan for Tract A illustrates the proposed addition of storage units to the existing No. Mar Storage facility. The plan is bounded by a north-south street on the left and an east-west street on the top. Key features include:

- Lots:** Lots 31 through 48 are delineated. Lots 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48 are shown with their respective dimensions and areas.
- Buildings:** Buildings A, B, C, and E are shown with their respective dimensions and areas. Building A is a large rectangular structure, while Buildings B, C, and E are smaller, more irregular structures.
- Parking:** Several parking areas are shown, including a large parking area in the center-right and smaller parking areas near the buildings.
- Utility Easements:** Four new 14' utility easements are shown, running parallel to the north-south street and the east-west street.
- Other Features:** A north arrow is located in the upper right corner. A "NEW 14' UTILITY EASEMENT" is shown running parallel to the north-south street. A "NEW 14' UTILITY EASEMENT" is shown running parallel to the east-west street. A "NEW 14' UTILITY EASEMENT" is shown running parallel to the east-west street. A "NEW 14' UTILITY EASEMENT" is shown running parallel to the east-west street.

# TRACT A

ADDITION of STORAGE UNITS  
to NO MAR STORAGE - 2501 N. MARKET

The site plan for Tract A shows a large area for the addition of storage units. The plan is divided into several sections by utility easements and parking areas. Key features include:

- Lots:** Lots 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48 are shown.
- Buildings:** Buildings A, B, C, D, and E are shown, each with multiple storage units. Building A is a large rectangular building with many units. Buildings B, C, D, and E are smaller, more compact buildings.
- Parking:** Several parking areas are shown, including a large parking area in the center and smaller parking areas near the buildings.
- Utility Easements:** New 14' utility easements are shown running horizontally and vertically across the site.
- Other Features:** A north arrow is located in the upper right corner. A "GARLAND BROOK ADDITION" is shown on the left side of the plan. A "NEW 14' UTILITY EASEMENT" is shown running vertically through the center of the site.

City of Wichita  
City Council Meeting  
April 24, 2012

**TO:** Mayor and City Council

**SUBJECT:** Hold Harmless Agreements (Easement Encroachment) (District IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the hold harmless agreements.

**Background:** Turkey Creek Homeowners Association desires to construct two entry signs on, over, or across a 20 foot drainage and utility easement.

**Analysis:** The agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of the public sewer line within the easement, and from claims resulting from replacement or upgrade of lines, manholes, and/or other City property in the easement. Turkey Creek Homeowners Association waives all rights of action in law arising out of the encroachments into the easement.

**Financial Considerations:** There is no cost to the City.

**Goal Impact:** The hold harmless agreements addresses the Ensure Efficient Infrastructure goal by maintaining and protecting the sanitary sewer system.

**Legal Considerations:** The Law Department has approved the agreements as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the agreements and authorize the necessary signatures.

**Attachments:** hold harmless agreements.

### HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this 8<sup>th</sup> day of March, 2012, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND the TURKEY CREEK HOMEOWNERS ASSOCIATION, hereinafter called "OWNER"

#### WITNESSETH:

Whereas, the public has been granted a Drainage and Utility Easement 20 feet in width, being the east 20 feet of the following described tract of land: Beginning at the NE corner of Lot 1, Block A, Turkey Creek 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas; thence S 01°24'26" W along the east line of said Lot 1, 25 feet; thence N 48°47'14" W, 39.05 feet to a point on the north line of said Lot 1; thence S 88°35'34" E along the north line of said Lot 1, 30 feet to the point of beginning;

and

Whereas, the Owner desires to occupy and construct improvements over the following described section of said easement, to wit; a wooden entrance sign, with a footing of two feet deep into the ground, hereinafter referred to as **Tract "A"** (see attached Exhibit showing proposed encroachment and location).

NOW THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

- (1) The City hereby agrees to permit the Owner to occupy and construct a wooden sign on, over and across the aforesaid utility easement, and specifically waives any and all rights of action in law or equity against Owner, arising out of the Owner's occupancy and encroachment on and over said easement.
- (2) The Owner agrees that it will not begin construction of the sign, on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvements.
- (3) In the event of an emergency or situation in which extensive notice is not feasible, that requires a repair and/or maintenance of the sanitary sewer line or other public structure within the easement, and the same repair and/or maintenance is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the City may remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement. In any other event that a sanitary sewer line or other public structure within the easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the Owner shall be obligated to either (a) allow the City to remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement; (b) remove the said encroachment and clear the easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the public structure. After being notified by the City of the planned repair, maintenance or construction, the Owner shall have thirty (30) days to notify the City of its option and, if removal of the structure was selected, to complete the removal. If the Owner fails to remove the structure or agree to pay the costs of tunneling under the encroachment within thirty (30) days, the City may remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement. The time to select an option or remove the structure may be extended by the City in writing.

- (4) The Owner agrees to protect and indemnify the City and adjacent property owners against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In the event the Owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner to the Turkey Creek Homeowners Association. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.
- (5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of that portion of said structure within Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the structure within the above described easement.
- (6) This agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement.
- (7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structure contemplated by this agreement is in existence.
- (8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

Turkey Creek Home Owners Association

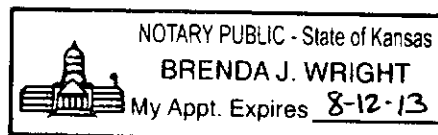
By: Rodney Z. Wright  
 President of HOA Management Services  
 Turkey Creek Home Owners Association

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 8<sup>th</sup> day of March, 2012, before me, a Notary Public, in and fore said county and state, came, Rodney Z. Wright, to me personally known to be the same person who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Notary Public  
 My Commission Expires: 8-12-13



CITY OF WICHITA, KANSAS

By \_\_\_\_\_

Carl Brewer, Mayor  
City

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Approved as to Form

Jerry E. Rehmert, Jr., Notary  
Director of Law

# TRACT A

W GRANT CT



W GRANT ST

S 119TH ST W

8" Sanitary Sewer Main

20' Drainage & Utility Easement

Lot 1, Block A  
Turkey Creek 2nd Addition

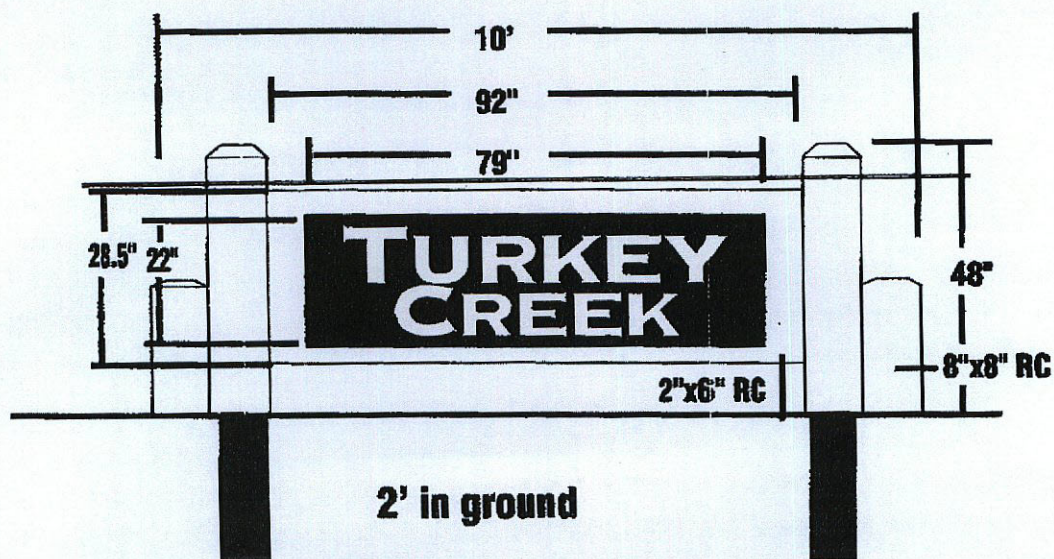
Sign Location

Sign is encroaching on a 20 ft  
Drainage and Utility Easement.

Located on a portion of Lot 1, Block A,  
Turkey Creek 2nd Addition, owned by the  
Turkey Creek Homeowners Association







1/2"=1 ft tan is rough cedar  
beigh vinyl on dark bronze .063 aluminum

### HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this 8<sup>th</sup> day of March, 2012, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND the TURKEY CREEK HOMEOWNERS ASSOCIATION, hereinafter called "OWNER"

WITNESSETH:

Whereas, the public has been granted a Drainage and Utility Easement 20 feet in width, being the east 20 feet of the following described tract of land: Beginning at the NE corner of Lot 60, Block E, Turkey Creek 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas; thence S 01°24'26" W along the east line of said Lot 60, 25 feet; thence N 48°47'14" W, 39.05 feet to a point on the north line of said Lot 60; thence S 88°35'34" E along the north line of said Lot 60, 30 feet to the point of beginning;

and

Whereas, the Owner desires to occupy and construct improvements over the following described section of said easement, to wit; a wooden entrance sign, with a footing of two feet deep into the ground, hereinafter referred to as **Tract "A"** (see attached Exhibit showing proposed encroachment and location).

NOW THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

- (1) The City hereby agrees to permit the Owner to occupy and construct a wooden sign on, over and across the aforesaid utility easement, and specifically waives any and all rights of action in law or equity against Owner, arising out of the Owner's occupancy and encroachment on and over said easement.
- (2) The Owner agrees that it will not begin construction of the sign, on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvements.
- (3) In the event of an emergency or situation in which extensive notice is not feasible, that requires a repair and/or maintenance of the sanitary sewer line or other public structure within the easement, and the same repair and/or maintenance is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the City may remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement. In any other event that a sanitary sewer line or other public structure within the easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the Owner shall be obligated to either (a) allow the City to remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement; (b) remove the said encroachment and clear the easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the public structure. After being notified by the City of the planned repair, maintenance or construction, the Owner shall have thirty (30) days to notify the City of its option and, if removal of the structure was selected, to complete the removal. If the Owner fails to remove the structure or agree to pay the costs of tunneling under the encroachment within thirty (30) days, the City may remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement. The time to select an option or remove the structure may be extended by the City in writing.



- (4) The Owner agrees to protect and indemnify the City and adjacent property owners against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In the event the Owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner to the Turkey Creek Homeowners Association. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.
- (5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of that portion of said structure within Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the structure within the above described easement.
- (6) This agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement.
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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

Turkey Creek Home Owners Association

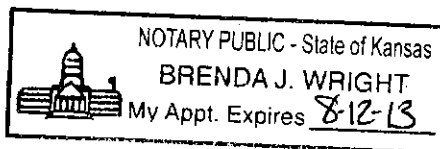
By: Rodney Z. Wright  
President of HOA Management Services  
Turkey Creek Home Owners Association

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 8<sup>th</sup> day of March, 2012, before me, a Notary Public, in and fore said county and state, came Rodney Z. Wright to me personally known to be the same person who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Notary Public  
My Commission Expires: 8-12-13



**CITY OF WICHITA, KANSAS**

By \_\_\_\_\_

Carl Brewer, Mayor  
City

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Approved as to Form

Darryl E. Reimnitz, J.D.  
Director of Law

# TRACT A

W JEWELL ST

W JEWELL CT

S 119TH ST W



4 53

## Sign Location

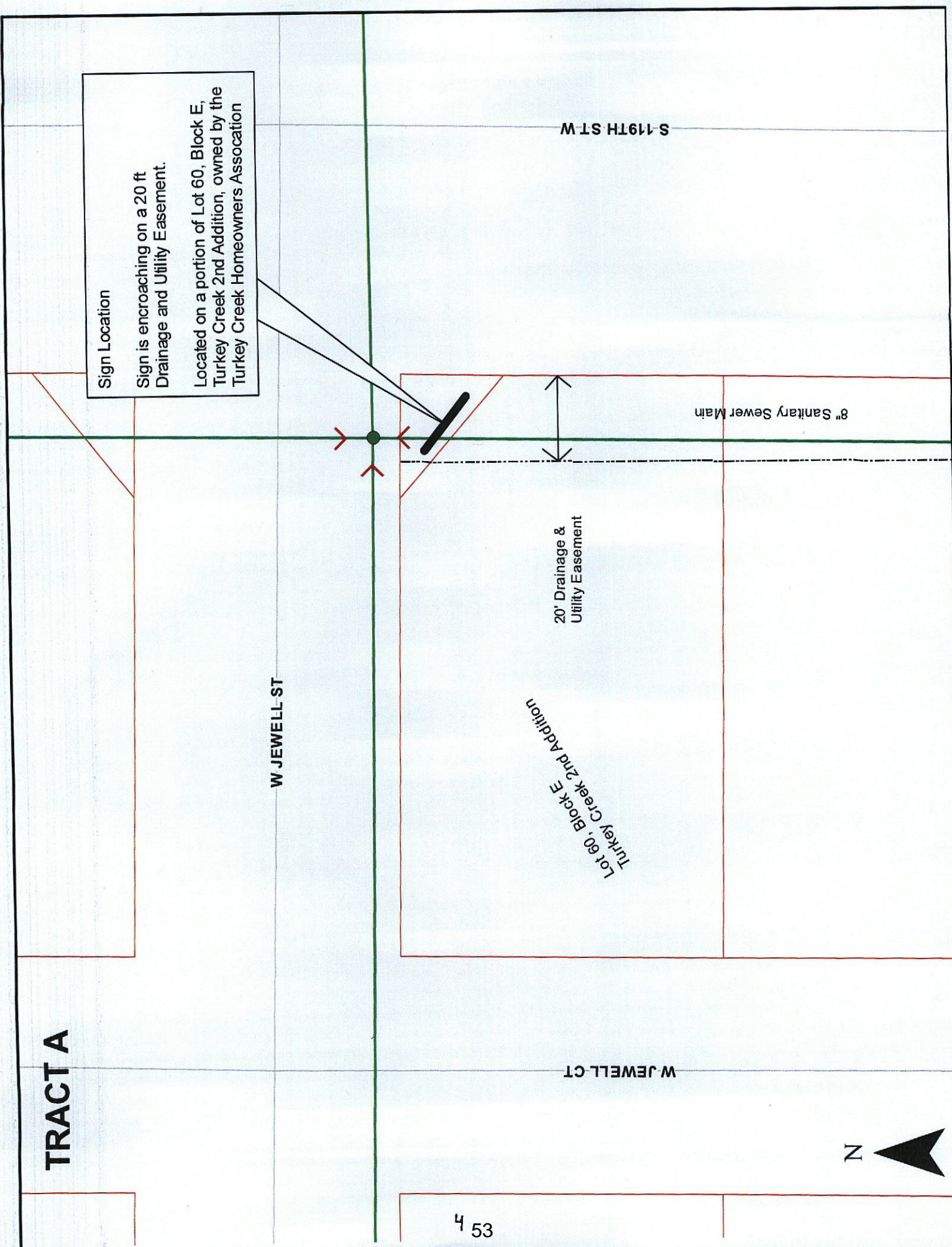
Sign is encroaching on a 20 ft  
Drainage and Utility Easement.

Located on a portion of Lot 60, Block E,  
Turkey Creek 2nd Addition, owned by the  
Turkey Creek Homeowners Association

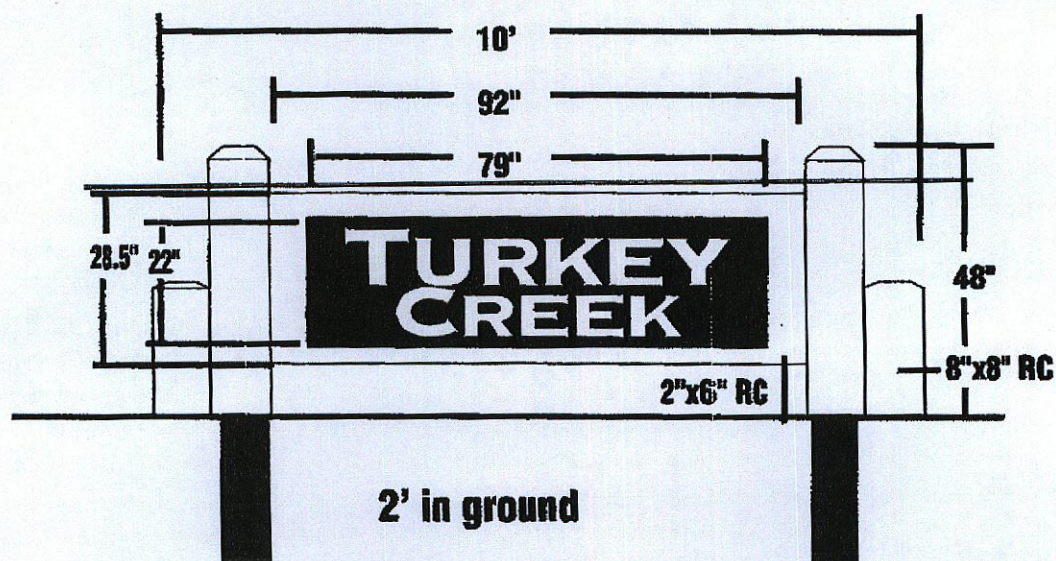
20' Drainage &  
Utility Easement

Lot 60, Block E  
Turkey Creek 2nd Addition

8" Sanitary Sewer Main







1/2"=1 ft tan is rough cedar  
beigh vinyl on dark bronze .063 aluminum





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DEPARTMENT OF LAW  
INTEROFFICE MEMORANDUM

---

**TO:** Karen Sublett, City Clerk  
**FROM:** Gary E. Rebenstorf, Director of Law  
**SUBJECT:** Report on Claims for March, 2012  
**DATE:** April 2, 2012

---

The following claims were approved by the Law Department during the month of March, 2012.

|                           |                 |
|---------------------------|-----------------|
| Black Hills Energy        | \$1,257.89      |
| Edwards, Ninnette         | \$ 350.00       |
| Farmers Insurance Company | \$4,500.00 * ** |
| Gudenkauf, Erica          | \$4,257.70      |
| Hurrel, Rob               | \$ 385.00       |
| Kansas Gas Service        | \$ 649.25       |
| McGowan, Glen             | \$ 643.79       |
| Ragain, Merv              | \$1,360.00      |

\*City Manager Approval

\*\* Settled for lesser amount than claimed

\*\*\*Settled for more than amount claimed

cc: Robert Layton, City Manager  
Kelly Carpenter, Director of Finance

**City of Wichita  
City Council Meeting  
April 24, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Contract Amendment, YMCA Summer Youth Employment Program

**INITIATED BY:** Housing and Community Services

**AGENDA:** Consent

---

**Recommendation:** Approve the contract amendment and authorize the necessary signatures.

**Background:** The City of Wichita has entered into a funding agreement with the U.S. Department of Housing and Urban Development (HUD) for the execution of projects and activities under Title I of the Housing and Community Development Act of 1974, under the Community Development Block Grant (CDBG) Program. On July 13, 2010, the Wichita City Council allocated \$213,186 for summer job training and employment opportunities for eligible youth. Of these funds, a total of \$29,363 was unexpended at the end of the program year.

On June 7, 2011, the Wichita City Council authorized a contract agreement with the YMCA to utilize CDBG funds in the amount of \$170,000 to administer Job Prep, a summer youth employment program. Under the terms of the original contract agreement, the YMCA program was to provide training and job placement services for 140 youth through the month of June 2012. The YMCA has requested to utilize the unexpended funds from the prior year to extend the Job Prep program through July and August, 2012.

**Analysis:** The requested funds are available for re-allocation, and the purpose is allowable. Amending the Job Prep contract with the YMCA to increase the amount by \$29,363 and extend the contract term to September 30, 2012, will allow the YMCA to provide employment opportunities to eligible youth in July and August, 2012.

**Financial Considerations:** This action involves the allocation of \$29,363 in prior year Community Development Block Grant funds which were designated for summer youth employment. No City General Funds are involved with this request.

**Goal Impact:** Services provided by this activity support Quality of Life goals.

**Legal Considerations:** The contract amendment has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the contract amendment, and authorize the necessary signatures.

**Attachments:** Contract amendment.



**First Amendment to the  
Contract Agreement between  
The City of Wichita Housing and Community Services Department and  
Young Men's Christian Association of Wichita, Kansas**

**THIS CONTRACT AMENDMENT** is executed this 24th day of April, 2012 by and between the City of Wichita Housing and Community Services Department (hereinafter called the City) and the Young Men's Christian Association of Wichita, Kansas, (hereinafter called the Subrecipient).

**WITNESSETH THAT:**

**WHEREAS**, on June 7, 2011 the City of Wichita allocated \$170,000 in CDBG funds for the execution of a Contract Agreement with Subrecipient for the approved activity; and

**WHEREAS**, on July 1, 2011, the above named entities were parties to a Contract Agreement with the caption as above set out and which details specific annual outcome measurements; and

**WHEREAS**, the above named parties now wish to modify and amend said Contract for the purposes of modifying the funding amount and the time of performance;

**NOW, THEREFORE**, the above named parties hereby agree, covenant and contract that the terms of the original contract dated the 1st day of July, 2011 are hereby reaffirmed and re-executed for and on behalf of these parties, except for the following clarifications, amendments, modifications and changes:

- Part B, Performance Criteria and Objectives, Commencement and Completion 1. Time of Performance: The services of the Subrecipient are to commence as soon as practicable on or after the date of the original contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period ending August 30, 2012. All expenditures associated with implementation of this activity must be submitted for reimbursement by that date.
- Part B, Scope of Services, Commencement and Completion 2. Close-out Period: The Subrecipient has 15days following the final expenditure during which to conduct and complete close-out requirements associated with this Agreement. Final accomplishment and outcome reports are due to the City by September 1, 2012.
- Part B, Performance Criteria and Objectives, Funding: It is mutually agreed by and between the City and the Subrecipient that an additional allocation of \$29,363.67 will be added to the current contract for the Job Prep program, specifically for youth wages during July and August, 2012. Any costs in excess of the combined total of \$199,363.67 are the responsibility of the Subrecipient.

**SUBRECIPIENT**

---

Dennis Schoenebeck  
The Young Men's Christian  
Association of Wichita, Kansas

**CITY OF WICHITA**

---

Carl Brewer, Mayor

**ATTEST:**

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Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

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Gary E. Rebenstorf, City Attorney  
City of Wichita

City of Wichita  
City Council Meeting  
April 24, 2012

**TO:** Mayor and City Council

**SUBJECT:** Century II Renovations Project (All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendations:** Adopt the resolutions.

**Background:** On April 19, 2011, the City Council approved Resolution Number 11-083 amending Resolution Number 10-016 for renovations of Century II Convention Hall. The authorizing resolution contained an error in referencing a previous resolution. A resolution has been prepared to correct the error. A new resolution has also been prepared to rescind three previous resolutions in order to consolidate the projects and clarify resolution expectations.

**Analysis:** The projects involve numerous renovations and improvements to the facility.

**Financial Considerations:** The approved project budgets of \$3,000,000 and \$1,500,000 are unaffected.

**Goal Impact:** This project addresses the Quality of Life goal by maintaining and optimizing public facilities and assets.

**Legal Considerations:** State Statutes provide the City Council authority to correct the error by resolution. The resolutions have been approved as to form by the Law Department.

**Recommendation/Actions:** It is recommended that the City Council adopt the resolutions and authorize the necessary signatures.

**Attachments:** Resolutions.

Published in the Wichita Eagle on April 27, 2012

RESOLUTION NO. 12-086

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA, KANSAS FOR THE IMPROVEMENT AND RENOVATION OF CENTURY II.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

Labor, material, and equipment for improvements at the Century II Convention Center, including design/development and renovation of Kennedy Plaza, replacement seating in Convention Hall Balcony, elevator installation both sides of Convention Hall, re-design of Convention Hall, replacement of Blue Roof over main building core, Expo Hall design, design and construction of new Concert Hall Schell. In addition labor, material, and equipment to renovate Concert Hall staging, including removal of two stair towers, design for restroom remodel on second level and Expo Hall restroom renovations. Technology improvements including labor, material and equipment for improvements to the phone system and ticketing at multiple locations, including but not limited to Century II Convention Center, City Arts, Old Cowtown Museum and Mid America All-Indian Center.

SECTION 2: That the cost of said public improvements shall be paid by the issuance and sale of general obligation bonds by the City of Wichita at large, in the manner provided by law and under the authority of K.S.A. 12-1736 and City of Wichita Charter Ordinance No. 156. The total cost is estimated at \$3,000,000, exclusive of the costs of interest on borrowed money.

SECTION 3: That the advisability of said improvements is established as authorized by K.S.A. 12-1736 and City of Wichita Charter Ordinance No. 156.

SECTION 4: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of April, 2012.

\_\_\_\_\_  
CARL BREWER, MAYOR

ATTEST:

\_\_\_\_\_  
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY REBENSTORF, DIRECTOR OF LAW

**AMENDMENT TO DECLARATION  
OF OFFICIAL INTENT CERTIFICATE**

Comes now Kelly Carpenter, Director of Finance for the City of Wichita, Kansas, and hereby amends a certain Declaration of Official Intent Certificate by substituting the revised description of improvements anticipated to be financed in connection with such capital improvement projects as detailed below.

| <u>OCA</u><br><u>No.</u><br><u>AMOUNT</u> | <u>TITLE</u>                   |
|---|--------------------------------|
| 792561<br>\$3,000,000                     | Century II Renovations 435-471 |

Section 5 of the original Declaration of Intent is hereby amended to describe the improvements as follows:

Labor, material, and equipment for improvements at the Century II Convention Center, including design/development and renovation of Kennedy Plaza, replacement seating in Convention Hall Balcony, elevator installation both sides of Convention Hall, re-design of Convention Hall, replacement of Blue Roof over main building core, Expo Hall design, design and construction of new Concert Hall Schell. In addition labor, material, and equipment to renovate Concert Hall staging, including removal of two stair towers, design for restroom remodel on second level and Expo Hall restroom renovations. Technology improvements including labor, material and equipment for improvements to the phone system and ticketing at multiple locations, including but not limited to Century II Convention Center, City Arts, Old Cowtown Museum and Mid America All-Indian Center.

This Certificate being signed and executed under oath by the Finance Director of the City of Wichita on the \_\_\_\_\_ day of \_\_\_\_\_.  
(month, year)

CITY OF WICHITA, KANSAS

\_\_\_\_\_  
Finance  
STATE OF KANSAS                    )  
  ) ss:  
COUNTY OF SEDGWICK            )

Kelly Carpenter, Director of

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.

(month, year)

\_\_\_\_\_  
My appointment expires: \_\_\_\_\_

Notary Public



Published in the Wichita Eagle on April 27, 2012

RESOLUTION NO. 12-087

A RESOLUTION AMENDING SECTIONS 1 AND 2 OF RESOLUTION NO. 07-510, AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA, KANSAS FOR THE IMPROVEMENT AND RENOVATION OF CENTURY II, AS PREVIOUSLY AMENDED BY RESOLUTION NO. 10-016 AND RESOLUTION NO. 11-083, AND RESCINDING THE PREVIOUS VERSIONS OF SAID SECTIONS AND SUCH PRIOR AMENDING RESOLUTIONS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That Section 1 of Resolution No. 07-510 adopted on September 11, 2007, as previously amended by Resolution No. 10-016 adopted on January 26, 2010, and Resolution No. 11-083 adopted on April 22, 2011, is hereby amended to read as follows:

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

Labor, material, and equipment for improvements at the Century II Convention Center, including campus marquees, security enhancements, carpet, office and lobby furnishings, kitchen upgrades, meeting room upgrades, audio/visual and stage sound improvements, event equipment, stage equipment, phone and computer equipment, and other improvements to interior areas. Other improvements include new doors, terrazzo repairs, event equipment repair and replacement, replacement of seating, carpet and paint.

SECTION 2: That Section 2 of Resolution No. 07-510 adopted on September 11, 2007, to the extent it may have been previously amended by Resolution No. 10-016 adopted on January 26, 2010, and Resolution No. 11-083 adopted on April 22, 2011, is hereby amended to read as follows:

SECTION 2: That the cost of said public improvements shall be paid by the issuance and sale of general obligation bonds by the City of Wichita at large, in the manner provided by law and under the authority of K.S.A. 12-1736 and City of Wichita Charter Ordinance No. 156. The total cost is estimated at \$1,500,000, exclusive of the costs of interest on borrowed money.

SECTION 3: That the advisability of said improvements is established as authorized by K.S.A. 12-1736 and City of Wichita Charter Ordinance No. 156.

SECTION 4: That the prior versions of Sections 1 and 2 of Resolution No. 07-510, as they heretofore existed, as well as Resolution No. 10-016 and Resolution No. 11-083, are hereby rescinded.

SECTION 5: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 24th day of April, 2012.

---

CARL BREWER, MAYOR

ATTEST:

---

KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

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GARY REBENSTORF, DIRECTOR OF LAW



**AMENDMENT TO DECLARATION  
OF OFFICIAL INTENT CERTIFICATE**

Comes now Kelly Carpenter, Director of Finance for the City of Wichita, Kansas, and hereby amends a certain Declaration of Official Intent Certificate by substituting the revised description of improvements anticipated to be financed in connection with such capital improvement projects as detailed below.

| <u>OCA</u><br><u>No.</u><br><u>AMOUNT</u> | <u>TITLE</u>                   |
|---|--------------------------------|
| 785122<br>\$1,500,000                     | Century II Renovations 397-229 |

Section 5 of the original Declaration of Intent is hereby amended to describe the improvements as follows:

Labor, material, and equipment for improvements at the Century II Convention Center, including campus marquees, security enhancements, carpet, office and lobby furnishings, kitchen upgrades, meeting room upgrades, audio/visual and stage sound improvements, event equipment, stage equipment, phone and computer equipment, and other improvements to interior areas. Other improvements include new doors, terrazzo repairs, event equipment repair and replacement, replacement of seating, carpet and paint.

This Certificate being signed and executed under oath by the Finance Director of the City of Wichita on the \_\_\_\_\_ day of \_\_\_\_\_.  
(month, year)

CITY OF WICHITA, KANSAS

|                      |                              |
|----------------------|------------------------------|
| _____                | Kelly Carpenter, Director of |
| Finance              |                              |
| STATE OF KANSAS )    |                              |
| ) ss:                |                              |
| COUNTY OF SEDGWICK ) |                              |

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.  
(month, year)

|                               |               |
|-------------------------------|---------------|
| _____                         | Notary Public |
| My appointment expires: _____ |               |

**City of Wichita  
City Council Meeting  
April 24, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Payment for Settlement of Claim

**INITIATED BY:** Law Department

**AGENDA:** Consent

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**Recommendation:** Authorize payment of \$80,000 as a full settlement for all claims arising out of an automobile accident.

**Background:** This claim arises from a traffic accident which occurred on August 21, 2008. The claim alleges that a Wichita street maintenance employee was negligent in the operation of his vehicle when it hit a vehicle driven by Vickie Schwemmer and in which B. Jane Mosteller was a passenger. It is alleged that both women incurred physical injuries as a result of the accident.

**Analysis:** The claimants have agreed to accept a lump sum payment of \$80,000 as full settlement of all their claims against the City of Wichita and its employee. Because of the uncertainty and risk of an adverse judgment at trial, the Law Department recommends the settlement. The settlement of this claim does not constitute an admission of liability on the part of the City or the employee; rather, it is merely a settlement to resolve a disputed claim.

**Financial Considerations:** Funding for this settlement payment is from the City's Tort Claims Fund.

**Goal Impact:** Payment of the negotiated sum contributes to the City goal of providing a Safe and Secure Community.

**Legal Considerations:** The Law Department recommends settlement of these claims for the amount of \$80,000.00

**Recommendations/Actions:** It is recommended that the City Council authorize payment of \$80,000 as full settlement of all possible claims arising out of the events which are the subject of this claim.

**Attachments:** None

**Second Reading Ordinances for April 24, 2012 (first read on April 17, 2012)**

**A. Design Supplemental Agreement No. 3– East Kellogg, Cypress to 127th Street East (Project I) (District II)**

**ORDINANCE NO. 49-263**

An ordinance amending Ordinance No. 48-835 of the City of Wichita, Kansas declaring Kellogg, between Cypress and 127th Street East (472-84615) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs hereof, and the manner of payment of the same.

**B. An Ordinance Amendment pertaining to exemption of public property from the prohibition against alcohol consumption – outdoor city-owned property around the Intrust Bank Arena and the site of the Kansas African American Museum.**

**ORDINANCE NO. 49-264**

An ordinance amending Section 4.04.045 of the code of the City of Wichita, Kansas, pertaining to exemption of certain public property within the city from the prohibition against consumption of alcoholic liquor thereon by virtue of the authority contained in K.S.A. 41-719, and repealing the original of said section.

**C. ZON2012-00004 – City zone change from SF-5 Single-family Residential (“SF-5”) to LI Limited Industrial (“LI”) generally located between South Maize Road and South Tyler Road, along the north side of K-42. (District IV)**

**ORDINANCE NO. 49-265**

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

City of Wichita  
City Council Meeting  
April 24, 2012

**TO:** Wichita Airport Authority

**SUBJECT:** Grounds Maintenance Services – Wichita Mid-Continent Airport  
Selection of Vendor

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the Agreement.

**Background:** In response to public solicitations, requests for proposals (RFPs) were accepted by the City of Wichita Purchasing Manager on March 23, 2012, for grounds maintenance services within the non-secured areas on Mid-Continent Airport. The term of this proposed agreement is to be for three (3) years commencing April 24, 2012, and provides for two (2) additional one (1) year renewal options.

Five (5) proposals were accepted by the City of Wichita Purchasing Manager on Friday, March 23, 2012.

**Analysis:** The selection committee, composed of representatives from the Airport, Finance, Purchasing, Budget, Public Works, and Law interviewed all five (5) proposers on April 4th, 2012. All proposers were evaluated and ranked based upon the following criteria: experience of company with substantially similar recent projects; experience of assigned supervisory personnel; equipment; and fee proposal. SLM, Inc., dba Suburban Landscape Management was selected as the top-ranked proposer based upon the highest ranking score. Suburban Landscape Management also submitted the lowest fee proposal.

**Financial Considerations:** The proposal submitted by Suburban Landscape Management includes an annual fixed-fee amount of \$68,250. Funds for this contract service are included in the Airport operating budget.

**Goal Impact:** The Wichita Airport Authority's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through providing services which enhance the appearance, safety, and functionality of the airport facilities to the traveling public and its tenant partners.

**Legal Considerations:** The contract agreement has been approved as to form and content by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

**Attachments:** Agreement.

**AGREEMENT**

**By and Between**

**THE WICHITA AIRPORT AUTHORITY**

**WICHITA, KANSAS**

**And**

**SLM, INC.**

**For**

**Grounds Maintenance Services**

**Wichita Mid-Continent Airport**

THIS AGREEMENT, made and entered into this **9th day of April 2012**, by and between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas, hereinafter referred to as the AUTHORITY; and SLM, INC. hereinafter referred to as the CONTRACTOR.

**WITNESSETH:**

WHEREAS, the Authority is desirous of providing grounds maintenance services on Mid-Continent Airport; and

WHEREAS, the Contractor is willing to provide such services on an independent contractor basis;

NOW THEREFORE, for and in consideration as hereinafter set out, it is agreed by both parties as follows:

1.

**Responsibilities**

Contractor shall provide grounds maintenance services on Mid-Continent Airport, Wichita, Kansas, as specified in **EXHIBITS A, A-1, A-2, and B** of this Agreement, attached hereto and made a part hereof. All services shall be in accordance with terms and conditions set forth herein.

In such cases where the maintenance of areas is rendered temporarily unsafe or inaccessible due to construction, utility work, or other such temporary obstructions which may occur due to no fault of the Contractor, then the Authority, at its option, may temporarily remove or modify such areas to be serviced by the Contractor until such time as affected areas are deemed safe and accessible.

Modifications, additions or removal of services contained in the **EXHIBIT A GROUNDS MAINTENANCE SPECIFICATIONS** shall not be made without the prior mutual consent and written agreement by both parties. Scope of services, work schedule, and frequency of services under this Agreement may be reduced or increased, and the Contractor shall perform the services as mutually agreed upon by both parties. Such modifications shall be made at a time mutually agreeable to the Authority and the Contractor. In the event there are reductions or additions in services, a reduction or increase in the Payment to Contractor may be implemented by letter signed by both parties.

The Authority shall further have the right to request, and the Contractor shall have the right to offer or not offer, additional grounds

maintenance services not contained under this Agreement. Such additional requests for services may include, but are not limited to, specialized landscape maintenance, removing and/or applying mulch to plant beds, installing or removing plantings, or special fertilization. In such cases the Authority shall provide a scope of services requested, and the Contractor may offer a cost proposal for said services. Services may be provided in scope and cost as mutually agreeable to by both parties.

**2.**

**Term**

The duration Term of this Agreement shall be for a period of three (3) years, commencing on April 24th, 2012 and terminating on March 30, 2015. This Agreement may be extended for two (2) additional one-year terms, subject to renegotiation of fees, and upon the approval of both the Authority and the Contractor. Such extension(s) must be in place and processed in written form no less than 90 days before the end of this original Agreement, or the end of the preceding extension.

**3.**

**Cancellation**

Either party may terminate this Agreement without cause by giving sixty (60) days notice in writing to the addresses of notice provided herein.

The Authority may immediately terminate this Agreement for cause for unsatisfactory performance or other breach of the provisions of this Agreement, after Contractor's failure to satisfactorily remedy such breach after ten (10) days

written notice. The Authority may immediately terminate the Agreement for cause without the ten (10) days notice upon the Authority's determination that such immediate termination is necessary for the protection of property or in the interests of public safety or welfare.

**4.**

**Payment to Contractor**

Contractor agrees to provide services outlined in this Agreement for an amount not to exceed:

YEAR 1 \$68,250.00 per annum, payable in seven (7) equal monthly installments (April - October) of \$9,750.00.

YEAR 2 \$68,250.00 per annum, payable in seven (7) equal monthly installments (April - October) of \$9,750.00.

YEAR 3 \$68,250.00 per annum, payable in seven (7) equal monthly installments (April - October) of \$9,750.00.

Payment shall be approved upon receipt of signed work-completed statement as specified under Paragraph 6, proper invoice from the Contractor, and compliance with other conditions set forth in the following paragraph.

**5.**

**Representation**

It is understood and agreed that Contractor shall at all times be deemed to be an independent contractor to the Authority. Nothing in this Agreement shall be construed or considered to create the relationship of employer and employee between the parties. Contractor is not an agent or employee of the Authority, and



shall not be entitled to any of the benefits of Authority's employees.

All persons providing grounds maintenance services pursuant to this agreement shall represent themselves as representatives of an independent contractor. Under no circumstances shall any grounds maintenance personnel represent themselves as employees or agents of any air carrier or the Authority. Any person providing grounds maintenance services is not an agent or employee of the Authority, and shall not be entitled to any of the benefits of Authority's employees.

## 6.

### **Inspection Reporting**

At its sole discretion the Authority may perform routine and periodic inspection of the premises serviced under this Agreement to determine that the Contractor is performing work outlined under this Agreement. Should the Contractor fail to perform all or any portion of the services, the Authority may, at its sole reasonable discretion, withhold payment until such time that the work is satisfactorily completed. Contractor shall make improvements, changes, and adjustments in quality and completeness of services delivered under this Agreement as may be reasonably required by Authority.

In the event the Contractor fails to provide grounds maintenance services as specified in this Agreement, the deficiencies noted will be called to the attention of the Contractor, and when so directed, must be remedied at the direction of, and within the time period specified by the Authority depending on the deficiency. If such deficiency is not remedied within the specified time

period, the Authority may perform the necessary work, and the Authority may reduce its payments to the Contractor by an equal amount.

Upon demand, and at the Authority's option, the Authority's authorized representative shall be notified when any work related to maintenance services commences, and upon completion of such work on a daily basis. If work is to be interrupted and not completed on a continuing daily basis once commenced, this shall be reported, as well as the length of the delay anticipated.

Upon completion of work on a weekly basis, the Contractor shall submit to the Authority a weekly work completed report in a form acceptable to the Authority's representative. Failure to provide the Authority with the required report at the end of each work week may result in non-payment or delayed payment to the Contractor.

7.

**Contractor to  
Furnish**

Contractor shall furnish for the amount specified under Paragraph 4 all necessary labor, materials, supplies and equipment required in the performance of grounds maintenance services as required under this Agreement.

8.

**Damages**

Any damage or loss to the building, property or facilities that is directly caused or attributed to the work performed by the Contractor under this Agreement shall be the responsibility of the Contractor. The Contractor may repair or replace such damage at their expense, or the Authority may, at its option,

replace or repair such damage, and reduce its payments to the Contractor by an equal amount.

**9.**

**Compliance  
with Laws**

The Contractor shall comply with all federal, state and local laws, statutes and ordinances, and Wichita Airport Authority rules and regulations and standard operating procedures which may pertain to the providing of services under this Agreement.

**10.**

**Bid Documents**

It is understood that all bid documents received by the Contractor for this project are hereby incorporated into this Agreement by reference.

**11.**

**Indemnity**

Contractor shall protect, defend and hold the City of Wichita and the Wichita Airport Authority and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of Wichita Mid-Continent Airport by Contractor or the acts or omissions of Contractor's officers, agents, employees, contractors, subcontractors,

licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the Authority. The Authority shall give to Contractor reasonable notice of any such claims or actions. The Contractor shall also use counsel reasonably acceptable to Authority in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

City of Wichita and the Wichita Airport Authority shall be held harmless for any and all breaches of Federal Aviation Administration, Transportation Security Administration or Authority's security rules or regulations caused by the Contractor, its agents or employees, or that occur on Wichita Mid-Continent Airport, except to the extent caused by Authority. In the event the Federal government imposes a fine or penalty for any such security violation, whether such fine or penalty is assessed to the Authority or the Contractor or their agents or employees, the penalty shall be paid by the Contractor, provided, however, that nothing herein shall prevent the Contractor from contesting the legality, validity or application of such fine or penalty to the full extent Contractor may be lawfully entitled so to do.

## 12.

### **Insurance**

Contractor agrees to maintain in effect during the term of this Agreement the following insurance:

#### 1. General Liability

Bodily Injury Liability  
\$1,000,000 Each Occurrence

\$1,000,000 Aggregate

Property Damage Liability  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

or

Bodily Injury and Property Damage Liability  
(Combined Single Limit)  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

2. Automobile Liability

Comprehensive Form, including all owned, hired and non-owned vehicles, with minimum limits for

Bodily Injury - \$1,000,000 Each Accident  
Property Damage - \$1,000,000 Each Accident

or

Bodily Injury and Property Damage (Combined Single Limit) \$1,000,000 Each Accident

3. Workers' Compensation/Employers Liability  
for minimum statutory limits

A Certificate of Insurance shall be provided to the Authority prior to the commencement of any work under this Agreement, naming the Wichita Airport Authority and the City of Wichita as an additional insured as it relates to the general liability policy. The Certificate must also state that the Authority will be given ten (10) days prior written notice of cancellation.

13.

**Nondiscrimination**

The Contractor shall not discriminate on the grounds of race, color, sex,

religion, national origin, ancestry, handicap, marital status, Vietnam era veteran or disabled veteran, and age except where age is a bona fide occupational qualification, in its operations or services. The Contractor shall not discriminate or permit discrimination against any person or groups of persons in violation of any federal, state or local laws, or of Part 21 of the Regulations of the Office of the United States Department of Transportation (49 CFR 21). The contractor, in performing the work or services required pursuant to this Agreement, shall not participate either directly or indirectly in discriminations prohibited by the nondiscrimination requirements of the City of Wichita, Kansas, as set out in Exhibit "D", attached hereto and incorporated herein by reference. The Authority reserves the right to take such action as the United States Government or any state or local government may direct to enforce this covenant.

Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered suborganizations provide assurances to the Authority that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**14.**

**Assignment**

Contractor shall not assign this Agreement without the written consent of Authority. Any such assignment or attempt thereat without such consent shall be void, and shall, at the option of the Authority, terminate this Agreement.

**15.**

**Notices**

Notices to Authority provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

The Wichita Airport Authority  
Wichita Mid-Continent Airport  
2173 Air Cargo Road  
Wichita, Kansas 67209-1958

Notices to Contractor provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

Suburban Landscape Management  
1100 E. MacArthur  
Wichita, Ks. 67216

or to such other respective addresses as the parties may designate in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day  
and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

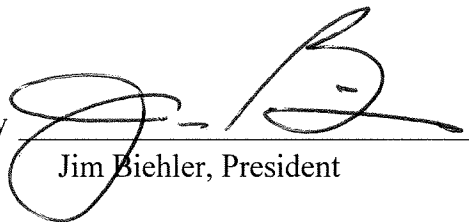
By \_\_\_\_\_  
Karen Sublett, City Clerk

By \_\_\_\_\_  
Carl Brewer, President  
"AUTHORITY"

By \_\_\_\_\_  
Victor D. White, Director of Airports

SLM, INC.

By \_\_\_\_\_  
Title \_\_\_\_\_

By  \_\_\_\_\_  
Jim Biehler, President  
"CONTRACTOR"

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Law



## **EXHIBIT A**

### **GROUNDS MAINTENANCE SPECIFICATIONS**

#### **1. GENERAL INFORMATION**

##### **A. Scope**

These specifications set forth the requirements for the grounds maintenance to be provided at Wichita Mid-Continent Airport located in Wichita, Kansas, throughout the duration Term of this Agreement.

##### **B. General Information**

The areas in which grounds maintenance services are to be performed are owned by the Authority and shall generally consist of the areas around and adjacent to the following properties:

- 1) Airport Administration Building - 2173 Air Cargo Road;
- 2) Airport Police and Fire House – 2193 Air Cargo Road;
- 3) Passenger Airline Terminal Building – 2299 Airport Road;
- 4) Cargo Airline Terminal Building - 1935 Air Cargo Road;
- 5) FAA Office Building - 1801 Airport Road;
- 6) FAA-MIDO – 2204 S. Tyler Road;
- 7) Wichita Mid-Continent Airport Suites - 1761 Airport Road;
- 8) Professional Insurance Building – 2120 Airport Road;
- 9) Other defined areas on Mid-Continent Airport as set forth in **EXHIBITS A-1, A-2 and B.**

The Contractor shall provide all labor, materials, supplies and equipment necessary to perform the services described herein. The work schedule will be jointly agreed upon by

the Authority and the Contractor, but is expected to be Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m.

C. Contractor Personnel and Property

The Contractor shall arrange for adequate supervision of work to be performed under this Agreement, and shall provide, in writing, a list of all management and supervisory personnel as well as proposed work schedule. An English speaking supervisor must be on duty at any time work is being performed under this Agreement. For the purposes of this Agreement, a "supervisor" is defined as any employee of the Contractor designated as being authorized by his or her employer to act as supervisor, foreman or lead worker, who is responsible for work tasks to be performed, and shall have the authority to respond quickly to problems, complaints or other issues which may arise regarding services to be performed under this Agreement. The Contractor shall provide 24-hour phone number(s) for sufficient quantity of management and/or supervisory staff so that the Authority may have consistent and reliable communications in the event of emergency. If required by the Authority, Contractor personnel may be required to display on the outside garment an Authority issued identification badge.

The Contractor shall not employ persons for work under this Agreement if such employee is identified to the Contractor by the Authority as a potential threat to the health, safety, security, or general well-being of the public or airport patronage. Contractor personnel shall present a neat appearance (reasonable to the nature of work performed), and be easily recognized as Contractor employees. This shall be accomplished by wearing distinctive clothing bearing the name of the company and/or company logo. Such clothing shall be furnished by the Contractor. Contractor personnel shall remain fully clothed while

performing duties under this Agreement.

D. Contractor Storage

The Authority shall not provide storage for the Contractor's materials, supplies and equipment. Contractor equipment may be temporarily parked or staged on Airport property during the active engagement of services under this Agreement. Parked or staged equipment shall be so located as to not pose a vehicle or pedestrian safety hazard, or impair, block or interrupt vehicle or pedestrian traffic, or impair, block or interrupt Authority and airport tenant business activity. The Authority, nor its tenants, shall be responsible for the safety and security of the Contractor's equipment when parked or staged on Airport property. The Contractor is encouraged to keep all equipment and tools properly secured when parked or staged.

E. Safety and General Operating Procedures

All equipment owned and/or utilized by the Contractor shall be properly identified and maintained in a safe, sightly and usable condition at all times. Contractor auto vehicles shall be properly identified, and at a minimum, prominently display the company name and/or logo. The Authority shall have the right to cause the Contractor to remove any unsafe, hazardous or unsightly equipment. The Authority shall have the right to require the Contractor to repair, replace or remove hazardous or unsightly equipment. The Contractor shall perform the work in a manner that does not create a safety hazard for Contractor employees, Authority employees, airport tenants or the public. The Contractor shall equip all vehicles and equipment for use under this Agreement with high visibility safety identification and warning lights, markings, signs or accessories required by federal, state or local laws, or as reasonably directed by the Authority. The Contractor shall issue to its

employees, and employees shall wear at all times while performing services under this Agreement, high visibility safety identification garments and accessories required by federal, state or local laws, or as reasonably directed by the Authority.

The Contractor shall maintain and make available for inspection by the Authority on demand, all material safety data sheets (MSDS) for chemicals classified as hazardous materials used in the performance of services under this Agreement.

F. Work Schedule

After Contract award but prior to the commencement of work, a conference will be held with representatives of the Authority and the Contractor to discuss contractual obligations, procedures and work scheduling within the guidelines and parameters of this Agreement . The Contractor shall propose specific dates for the ongoing completion of each item of work. Upon approval of the Authority, this schedule shall be documented in writing and must be adhered to by the Contractor and may only be changed by mutual agreement of both parties.

G. Inspections and Deficiencies

Authority authorized representative(s) will be designated at the beginning of the Agreement for the purpose of determining acceptability of the grounds maintenance services performed. The Authority's representative(s) shall also be responsible to act on the Authority's behalf in responding to Contractor concerns, complaints or other issues which may arise associated with the scope of services performed. Periodic inspections shall be conducted by the Authority to ensure compliance with the Agreement.

## 2. **DEFINITIONS**

### A. Frequency of Performance Definitions

All work shall be done according to a mutually agreed time schedule, with approximately equal time intervals between work. Work is expected to be performed Monday through Friday between the hours of 6:00 a.m. and 8:00 p.m.

Daily. Work shall be performed each day (24-hour period, M-F).

Semi-weekly. Work shall be performed twice each week.

Weekly. Work shall be performed once each week (7-day period).

Semi-monthly. Work shall be performed twice each month.

Monthly. Work shall be performed once each month (30-day period).

Other. As mutually agreed to under the terms of this Agreement.

Upon request. Upon the request of the Authority (may be subject to additional fees not contained in this Agreement).

### B. Other Definitions

Pavement Crack Grass. Any and all vegetation that grows in the joints and cracks of all pavements, sidewalk, parking lots and curb and gutter.

Flower or Plant Bed. A defined area consisting of ornamental vegetation, shrubs and ground cover plants and material.

Grass or turf. Botanically, any plant of the Gramenae family which is characterized by narrow leaves with parallel veins. The leaves are composed of blade, sheath, and ligule. The plants have jointed stems, fibrous roots, and inconspicuous flowers

usually arranged in spikelets. For purposes of this Contract, the term "grass" is also used to mean all low-lying vegetation, including weeds that grow in lawns, grounds, and fields.

Grounds Maintenance. The agricultural maintenance practices required to provide disease and pest-free grasses having the appearance desired. This generally includes, but is not limited to, mowing, trimming/edging, policing of debris, fertilizing, raking, sweeping, and control of insects, diseases and weeds.

Grounds Maintenance Debris. Plant materials occurring naturally or residue from grounds maintenance work. This material includes branches, limbs, clippings, cuttings, trimmings, pruning, leaves, etc.

Plants. Perennial plants including trees, shrubs, vines, ground covers, and hedges.

Trash/Debris. Objects and litter that present obstacles to mowing and other grounds maintenance operations, or detract from good appearance of the grounds, including but not limited to paper, plastic, glass, cans, cardboard, wood, metal, rags and dead animals.

### 3. **SPECIFIC TASKS**

#### A. Mow and trim grass.

The Contractor shall mow all grass identified in **EXHIBIT A-1** on a weekly cycle to a uniform height. Grass shall be cut between 2 ½ and 3 inches unless a greater height is requested by the Authority. No more than seven (7) calendar days between mowing will be accepted unless due to adverse weather conditions, or unless specifically approved by the Authority. The Contractor shall mow all grass identified in **EXHIBIT A-2** on a ten (10) calendar day cycle to a uniform height. Grass shall be cut between 2 ½ and 3 inches unless

a greater height is requested by the Authority. No more than ten (10) calendar days between mowing will be accepted unless due to adverse weather conditions, or unless specifically approved by the Authority. If adverse weather conditions occur, the Contractor may request permission from the Authority for an extension. Grass shall be cut uniformly to the edges of buildings, trees, shrubs, fences, poles, hydrants, parking bumpers, and other structures adjacent to or within grass area. Trimming shall be shall be accomplished to meet these standards in areas that are inaccessible to mowers. Excessive grass clippings (those piled above the cut grass level) shall be removed and properly disposed. Grass clippings on sidewalks and other paved areas shall be removed by blowing or sweeping. Grass clippings shall not remain on sidewalks, curbs, streets, or plant beds. Prior to mowing operations, the Contractor shall remove all debris. Grass/weeds shall be trimmed around trees, shrubs, buildings, fences, poles, posts, fire hydrants, parking lot/bumpers, etc. No more than seven (7) calendar days between trimmings will be accepted for **EXHIBIT A-1** and No more than ten (10) calendar days between trimmings will be accepted for **EXHIBIT A-2**. Herbicides for trimming may be approved on a very limited area. Herbicide used shall be Roundup, or other chemical approved by the Authority in advance. The Contractor shall follow all label requirements and not damage desirable plants. The area(s) that the herbicide is applied to shall not extend more than four (4) inches from the obstacle(s).

B. Edge Grass.

The Contractor shall edge grass/weeds adjacent to gutters, sidewalks, and driveways. Curbs shall be edged/trimmed to keep the grass from extending over the adjacent structure, but not cut back more than one and one-half (1½) inches. No more than seven (7) calendar days between edgings will be accepted for **EXHIBIT A-1** and No more than ten (10)

calendar days between edgings will be accepted for **EXHIBIT A-2**. The appearance of this work shall be neat and uniformly aligned with the adjacent structure. Herbicides shall not be used for edging.

C. Prevent growth of pavement crack grass.

Pavement crack grass and weeds shall be eliminated and prevented from growing in all streets, sidewalks, driveways, curbs, and parking lots on and around areas adjacent to those identified in **EXHIBIT A-1, A-2**, and Part 1.B of these Specifications. Pavement crack grass and weeds shall be eliminated with herbicide and the dead plants shall be removed manually or mechanically. This shall be accomplished monthly or as required. The Contractor shall hold a valid state of Kansas license/certificate in pesticide/herbicide use/application. The Contractor is responsible for proper and safe use of chemicals in accordance with federal, state and local laws. All pesticides/herbicides to be used shall be approved in advance by the Authority.

D. Flower/Plant Beds.

The Contractor shall be responsible for cleaning and trimming shrubs and hedges, plant beds and planters, and removing weeds at the properties identified in Part 1.B of these specifications. This shall be a semi-monthly requirement. All weeds shall be removed or eradicated manually, mechanically, or with the use of herbicides. If herbicides are used, the dead plant(s) shall also be removed manually or mechanically brought within standards of the immediate surrounding areas. All pesticides/herbicides to be used shall be approved in advance by the Authority.

E. Trash pick up.



The Contractor shall pick up, collect, and dispose of all trash and debris on a daily (Monday-Friday) basis. This includes the areas adjacent to the properties identified in Part 1.B of these Specifications and as identified in **EXHIBIT B**. This includes, but is not limited to, all grounds, rock beds, sidewalks, streets, plant beds, fence lines, and parking lots. Trash/debris pick up shall be conducted daily between the hours of 6:00 a.m. and 11:00 a.m. All trash/debris shall be transported and disposed of in a location acceptable to the Authority. Debris or policed materials or particles must be prevented from becoming airborne from Contractor vehicles while being transported. Burning of any material by the Contractor on Airport Authority property is prohibited.

F. Trash Receptacles.

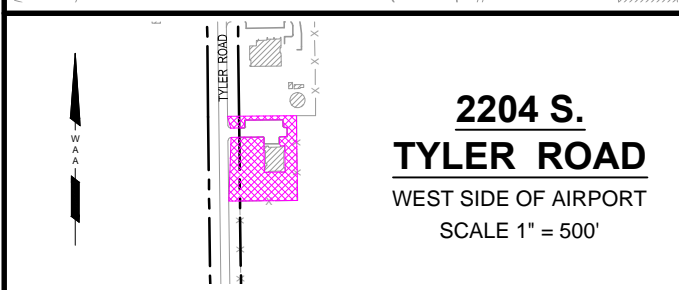
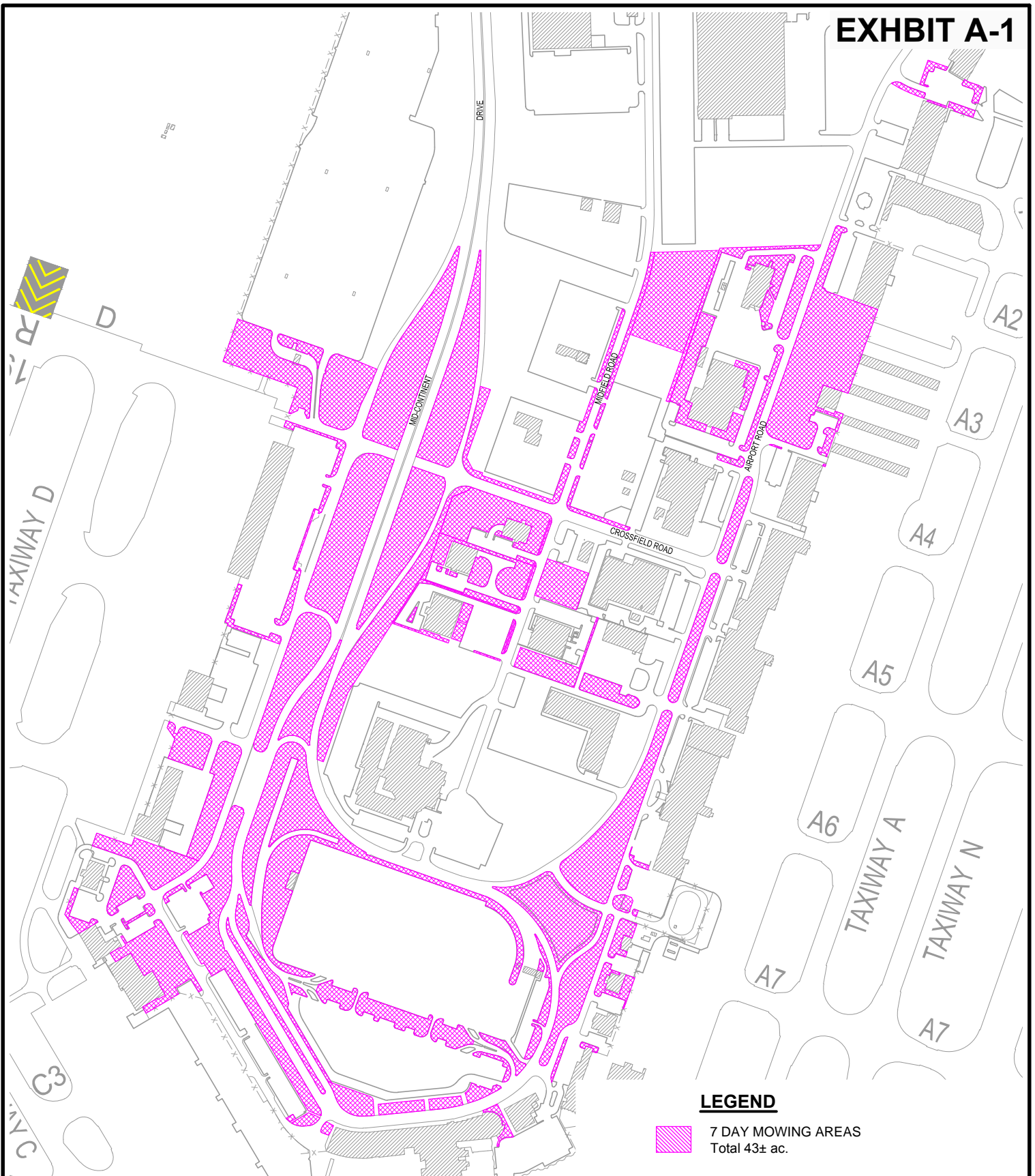
The Contractor shall check and empty the contents of the (12) identified exterior trash receptacles on a daily basis, (Monday-Friday). The Contractor shall provide suitable trash container liners acceptable to the Authority for these identified exterior trash receptacles.

G. Property Damage.

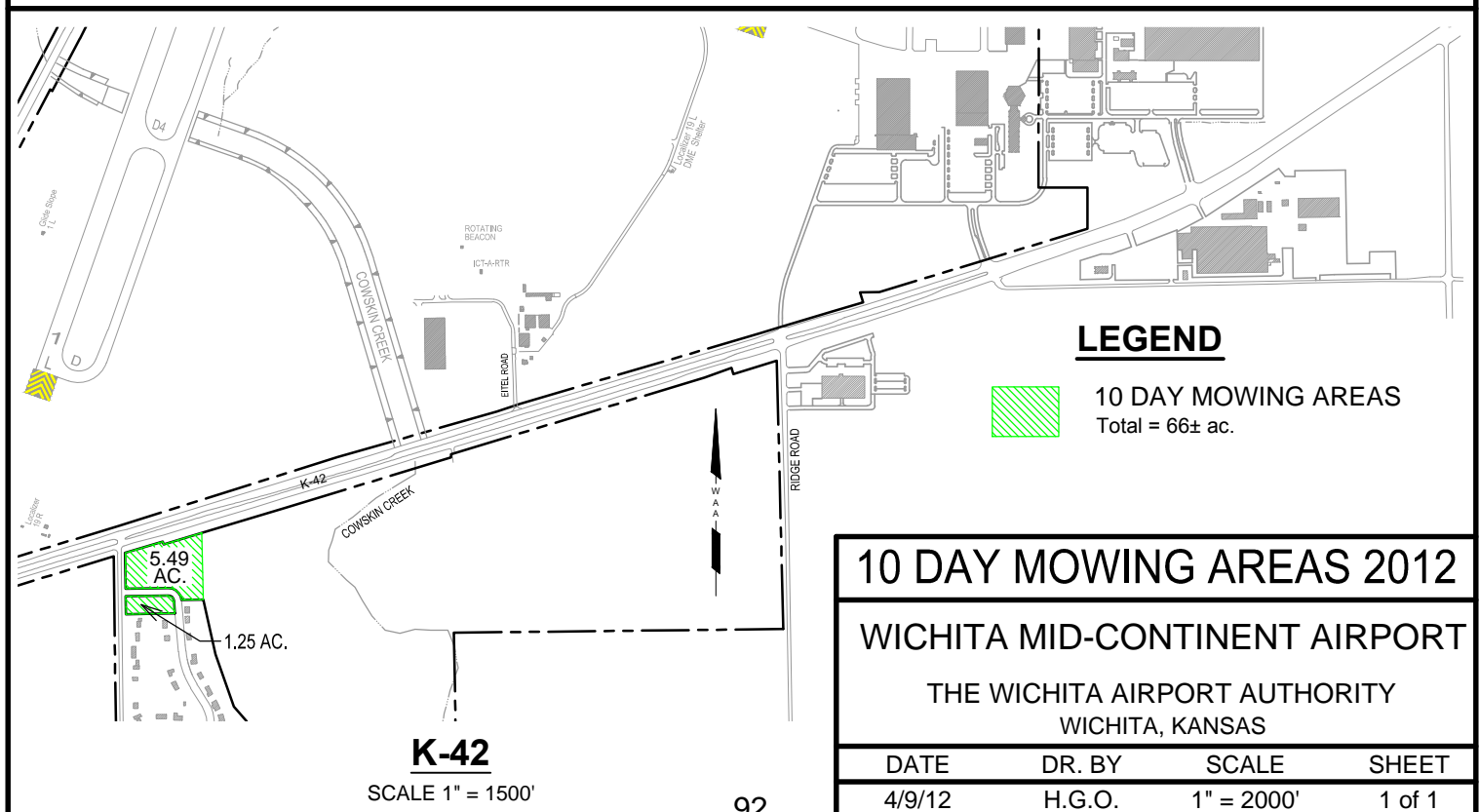
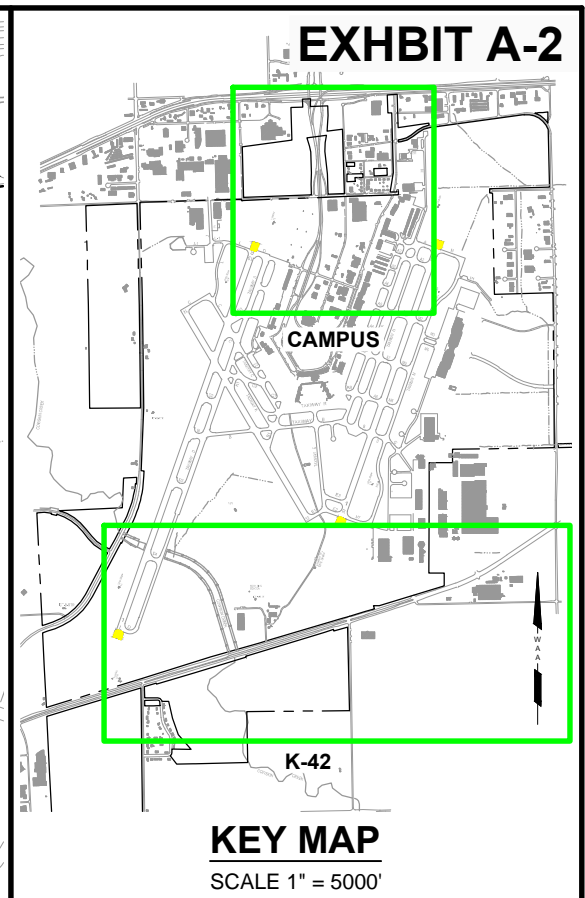
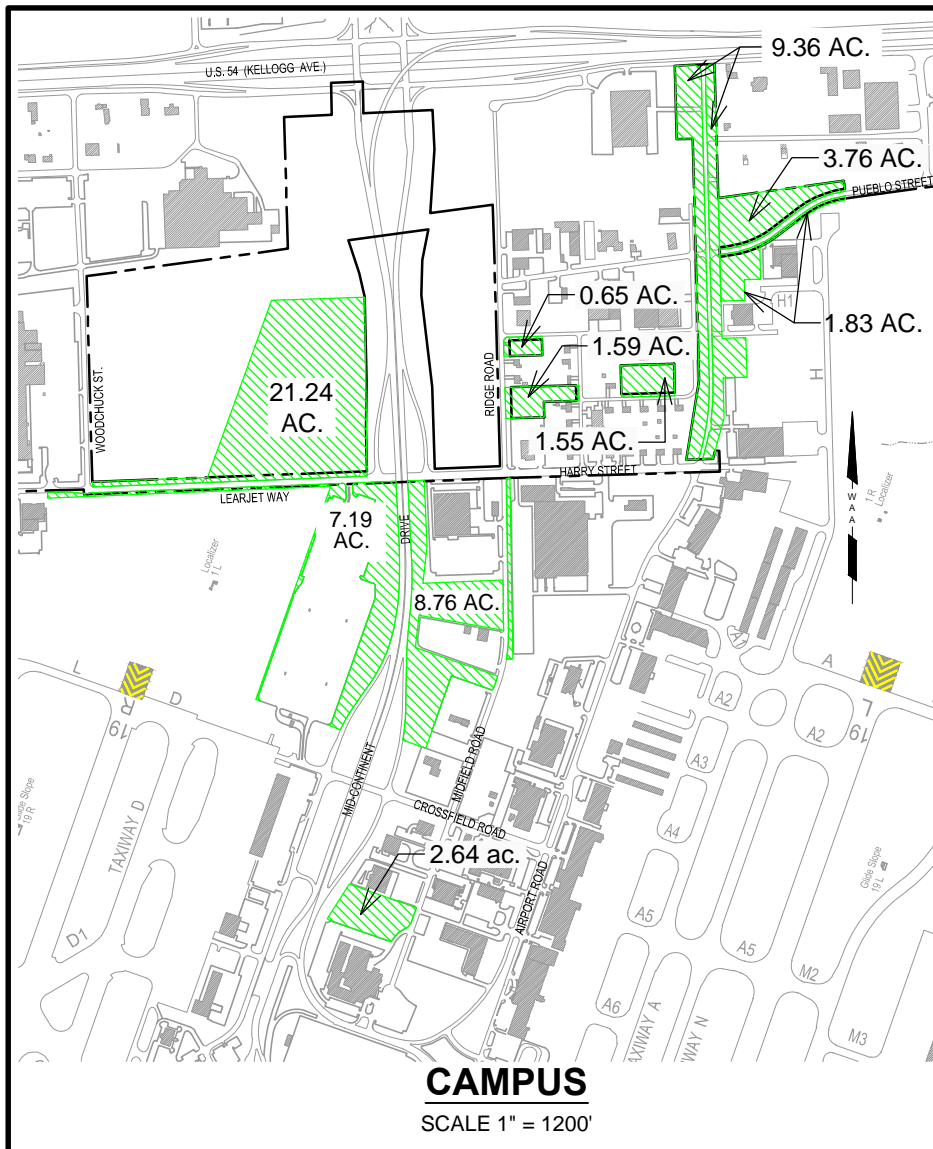
Precautions will be taken to prevent scalping, uneven mowing, rutting by equipment, and damage to turf, trees, shrubs and sprinkler system components. The Contractor shall repair or replace, within three (3) working days, all turf, shrubs, trees, sprinkler system components, signs, (traffic signs, stop and yield must be repaired in 4 hours) and other equipment, facilities or structures damaged during mowing operations. The Contractor shall be responsible for any remedial actions or repairs as a result of runoff or erosion problems caused by use of the herbicide. The Contractor is specifically advised to take all due

precautions to not destroy or damage turf, cause rutting, or cause tracking of mud on paved surfaces when grounds are wet, especially in drainage and other low-lying areas.

End of Specifications Section



| MOWING AREAS 2012                                |        |           |        |
|--|--------|-----------|--------|
| WICHITA MID-CONTINENT AIRPORT                    |        |           |        |
| THE WICHITA AIRPORT AUTHORITY<br>WICHITA, KANSAS |        |           |        |
| DATE   | DR. BY | SCALE     | SHEET  |
| 4/9/12   | H.G.O. | 1" = 500' | 1 of 1 |

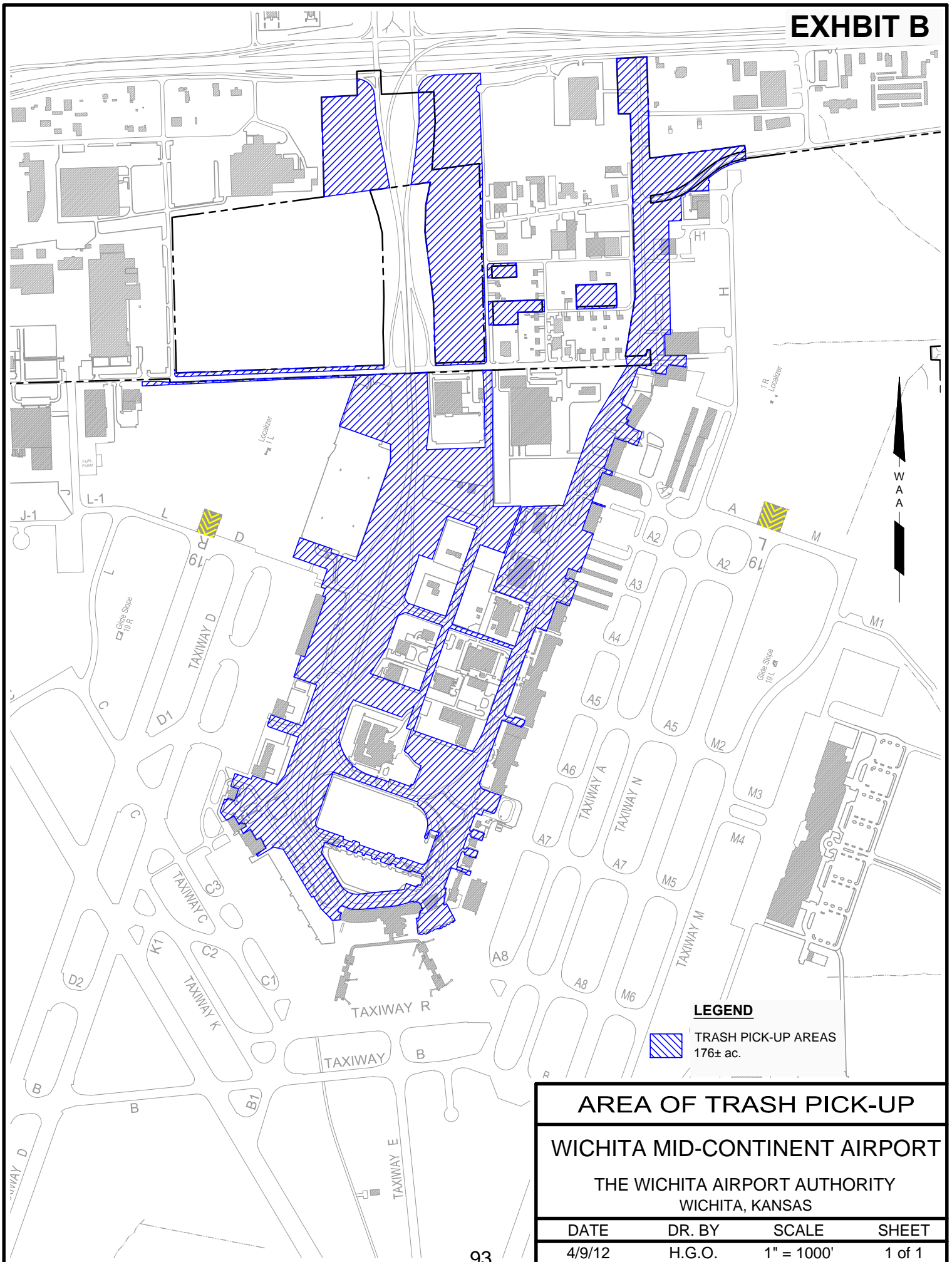


### LEGEND



10 DAY MOWING AREAS  
Total = 66± ac.

| 10 DAY MOWING AREAS 2012                         |        |            |        |
|--|--------|------------|--------|
| WICHITA MID-CENTRAL AIRPORT                      |        |            |        |
| THE WICHITA AIRPORT AUTHORITY<br>WICHITA, KANSAS |        |            |        |
| DATE   | DR. BY | SCALE      | SHEET  |
| 4/9/12   | H.G.O. | 1" = 2000' | 1 of 1 |





**City of Wichita  
City Council Meeting  
April 24, 2012**

**TO:** Wichita Airport Authority

**SUBJECT:** License Agreement for Exterior Conduits and Duct Banks  
New Cingular Wireless PCS, LLC  
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the License Agreement.

**Background:** The Wichita Airport Authority (Authority) has developed an infrastructure of duct banks and conduits throughout the core area of Mid-Continent Airport for the purpose of providing a pathway for communication cables utilized by the Authority's network, telephone system, closed-circuit television, and access control system. These duct banks and conduits are constructed primarily adjacent to roadways so that they are typically not interrupted by, nor an impediment to, facility construction. Placing communication cables in duct banks and conduits provides the cables more protection while also improving the method for controlling the location of such cables so that they have the least impact on future development. Extra capacity has been planned in the duct bank and conduit infrastructure to allow for its use by communication service providers which will make installations faster and more cost effective and should result in access for more tenants.

The WAA created the conduit license agreement several years ago so that communications providers could utilize Authority-owned conduits and duct banks in order to better serve their existing customers, or to reach new customers on the Airport. The Authority must provide equal access to any communications provider so as to comply with the Federal Telecommunications Act of 1996, and offering license agreements for use of the Authority conduits meets this obligation. Other communications providers to the Airport campus have previously entered into a conduit access license agreement with the Authority.

**Analysis:** New Cingular Wireless PCS, LLC (New Cingular), through AT&T Mobility Corporation as its manager, is now desirous of entering into a License Agreement that allows access to the Authority-owned duct banks and conduits. The term of the License Agreement is for five years and will continue for as long as New Cingular has customers subscribing to services which require the use of its facilities. Either party may terminate the License Agreement by giving 90-day written notice. The License Agreement requires New Cingular to apply for individual licenses for each use of the Authority-owned duct banks and conduits. The individual licenses will be approved by Airport staff after the proper submittals and preparatory work is completed. The cables placed in the Authority-owned duct banks and conduits remain the property of the communication provider, which has all maintenance and service responsibilities.

**Financial Considerations:** The License Agreement includes an annual fee of \$456 per facility access. Typically this fee is one per facility; however, in multi-tenant facilities it is per tenant served. If there is diverse access to a facility, then the fee is per access point. There is also a one-time application fee of \$250 associated with entering into the License Agreement. The total revenue from this agreement will depend on the number of tenants that New Cingular ultimately serves. The first license request is in process currently and will result in annual revenue of \$456 per year.

**Goal Impact:** The Airport's contribution to the Economic Vitality of Wichita is promoted through facilitating arrangements that enhance the infrastructure available on the Airport which can be used to provide better services to the tenants.

**Legal Considerations:** The License Agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the License Agreement and authorize the necessary signatures.

**Attachments:** License Agreement.

# **LICENSE AGREEMENT**

**For**

**EXTERIOR CONDUITS AND DUCT BANKS**

**Between**

**THE WICHITA AIRPORT AUTHORITY**

**And**

**New Cingular Wireless PCS, LLC**

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## APPENDICES

- I. Application for Conduit Occupancy License

## SCHEDULES

- I. WAA Schedule of Fees and Charges for Conduit Occupancy

**LICENSE AGREEMENT  
FOR  
EXTERIOR CONDUITS AND DUCT BANKS**

This License Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between the Wichita Airport Authority ("WAA") and New Cingular Wireless PCS, LLC with its principal place of business at 13075 Manchester Road, Suite 100, St. Louis, MO 63131 ("Licensee").

**WITNESSETH:**

WHEREAS, Licensee desires access to WAA Conduits and Duct Banks located on Wichita Mid-Continent and Colonel James Jabara Airports (collectively "Airport Premises");

WHEREAS, WAA is willing to license under certain conditions, on a non-exclusive license basis, to the extent it may lawfully do so, the placement of Licensee's facilities in exterior WAA Conduits and Duct Banks where reasonably available on Airport Premises;

NOW THEREFORE, in consideration of the promises, mutual covenants, and the terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

**1.0 DEFINITIONS**

Definitions in General. Except as the context otherwise requires, the terms defined in this License Agreement shall, as used herein, have the meanings set forth in 1.1 through 1.22.

- 1.1 Application. The term "Application" refers to a WAA application for Conduit Occupancy. See Appendix I.
- 1.2 Applicant. The term "Applicant" refers to the party requesting authorization to occupy Conduits or Duct Banks owned or controlled by WAA.
- 1.3 Assigned. The term "Assigned", when used with respect to Conduit or Duct Bank space, refers to any space in such Conduits or Duct Banks that is occupied by a communications service provider or a municipal or other governmental authority. To ensure the judicious use of Conduits and Duct Banks, assigned space must be physically occupied by the Licensee within six (6) months of the space being "Assigned".

- 1.4 Available. The term "Available", when used with respect to Conduit or Duct Bank space refers to any usable space in such Conduit or Duct Bank not Assigned at the applicable time. Available space does not include Conduit and Duct Bank space reserved by WAA for maintenance, repair or emergency restoration.
- 1.5 Conduit. The term "Conduit" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this License Agreement, the term "Conduit" has the same meaning as "Duct" and includes "inner-ducts" created by subdividing a Conduit into smaller channels.
- 1.6 Conduit Occupancy. The terms "Conduit Occupancy" and "Occupancy" refer to the presence of wire, cable, optical conductors, or other facilities within any portion of WAA's Conduits and Duct Banks.
- 1.7 Cost. The term "Cost" as used herein refers to charges made by WAA to Licensee for specific work performed, and shall be (a) the actual charges made by subcontractors to WAA for work and/or, (b) if the work was performed by WAA employees, at the rates mutually agreed upon.
- 1.8 Duct Bank. The term "Duct Bank" refers to any combination of Conduits, Manholes and Handholes joined to form an integrated whole. In this License Agreement, the term refers to Duct Bank owned or controlled by WAA.
- 1.9 Facilities. The terms "Facility" and "Facilities" refer to any property or equipment utilized in the provision of services by Licensee or WAA.
- 1.10 FCC. The term "FCC" refers to the Federal Communications Commission.
- 1.11 Handhole. The term "Handhole" refers to a shallow enclosure, usually below ground level and accessed through a hole on the surface covered with a lid, which personnel may insert a hand for the purpose of installing, operating, and maintaining facilities in a Conduit or Duct Bank.
- 1.12 Inner-Duct. The term "Inner-Duct" refers to a pathway created by subdividing a Conduit into smaller channels.
- 1.13 License. The term "License" refers to any License issued pursuant to this License Agreement.
- 1.14 Licensee. The term "Licensee" refers to a person or entity which has entered or may enter into a License Agreement or arrangement with WAA permitting such person or entity to place its facilities in WAA's Conduits and Duct Banks.
- 1.15 Make-Ready Work. The term "Make-Ready Work" refers to all work to be performed to prepare WAA's Conduits and Duct Banks and related facilities for

the requested Occupancy of Licensee's facilities. "Make-Ready Work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" Conduits to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities in a Conduit or Duct Bank where such work is required solely to accommodate Licensee's facilities and not to meet WAA business needs or convenience. "Make-Ready Work" may require "digups" of existing facilities and may include the repair, or modification of WAA facilities (including, but not limited to, Conduits, Duct Banks, Manholes and Handholes) or the performance of other work required to make a Conduit or Duct Bank usable for the initial placement of Licensee's facilities.

- 1.16 Manhole. The term "Manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a lid, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a Conduit or Duct Bank.
- 1.17 Occupancy. The term "Occupancy" shall refer to the physical presence of facilities belonging to Licensee in a Conduit or Duct Bank.
- 1.18 Person Acting on Licensee's Behalf. The terms "Person Acting on Licensee's Behalf", "Personnel Performing Work on Licensee's Behalf", and similar terms include both natural persons, firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The aforementioned terms specifically include, but are not limited to, Licensee, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by Licensee and their respective officers, directors, employees, agents, and representatives.
- 1.19 Person Acting on WAA's Behalf. The terms "Person Acting on WAA's Behalf", "Personnel Performing Work on WAA's Behalf", and similar terms include both natural persons and firms and ventures of every type, including, but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The aforementioned terms specifically include, but are not limited to, WAA, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request or on behalf of WAA and their respective officers, directors, employees, agents and representatives.
- 1.20 Pre-License Work. The term "Pre-License Work" refers to all work and activities performed or to be performed to determine whether there is adequate capacity in a Conduit or Duct Bank (including Manholes and Handholes) to accommodate Licensee's facilities and to determine what Make-Ready Work, if any, is required to prepare the Conduit or Duct Bank to accommodate Licensee's facilities.

- 1.21 Sheath. The term "Sheath" refers to a single outer covering containing communications wires, fibers, or other communications media.
- 1.22 Third Party. The terms "Third Party" and "Third Parties" refer to persons and entities other than Licensee and WAA. Use of the term "Third Party" does not signify that any such person or entity is a party to this License Agreement or has any contractual rights hereunder.

## **2.0 SCOPE OF LICENSE AGREEMENT**

- 2.1 Undertaking of WAA. WAA shall provide Licensee, to the extent available, with equal and nondiscriminatory access to Conduits and Duct Banks owned or controlled by WAA.
- 2.2 Licensee Existing Facilities. WAA shall issue one or more non-exclusive License(s) to Licensee authorizing existing Licensee facilities not covered by another agreement and existing at the time of the execution of this Agreement.
- 2.2.1 Existing Licensee Facilities will be documented by Licensee in order to receive authorization under this License Agreement. Each application for a License for Existing Licensee Facilities under this License Agreement shall specify the actual Licensee's facilities and describe the horizontal and vertical location, type, physical size, jacket material and age of the cable. Such documentation will be provided through proper completion of forms provided by the WAA. Licensing of existing facilities does not serve to create easement or right-of-way rights for those facilities nor make the WAA liable for the impact of the removal, interruption or destruction of Existing Licensee Facilities, except to the extent caused by WAA's negligence. License Fees pursuant to Section 13 will not apply to Existing Licensee Facilities.
- 2.2.2 Any Existing Licensee Facilities that are not documented in an approved License will be considered abandoned by the Licensee. WAA shall not be liable for the impact of the removal, interruption or destruction of Existing Licensee Facilities if such Licensee Facilities are not approved in a License.
- 2.3 Occupancies Authorized by this License Agreement. WAA shall issue one or more non-exclusive Licenses to Licensee authorizing Licensee to place facilities within WAA's owned or controlled Conduits and Duct Banks under the terms and conditions set forth in this License Agreement.
- 2.3.1 Unless otherwise provided herein, authority to place facilities within WAA owned or controlled Conduits and Duct Banks shall be granted only in

individual Licenses granted under this License Agreement and the placement or use of such facilities shall be determined in accordance with such Licenses and procedures established in this License Agreement.

2.3.2 Licensee agrees that its Occupancy of WAA's owned or controlled Conduits and Duct Banks shall take place pursuant to the licensing procedures set forth herein, and WAA agrees that it shall not unreasonably withhold issuance of such Licenses.

2.4 Licenses. Subject to the terms and conditions set forth in this License Agreement, WAA shall issue to Licensee one or more Licenses authorizing Licensee to place Facilities in Conduits or Duct Banks owned or controlled by WAA on a first come, first served basis. WAA may deny a License application if WAA determines, in its sole judgment, that the Conduit or Duct Bank space specifically requested by Licensee is needed to meet WAA's present or future requirements, or is Licensed by WAA to another Licensee, or is otherwise unavailable based on engineering or other valid concerns. WAA shall provide written notice to Licensee within 45 days specifying in detail the reasons for denying Licensee's request.

Subject in all instances to considerations of WAA's service requirements including considerations of capacity, safety, reliability and generally applicable engineering purposes, WAA is willing, when it may lawfully do so, to issue one or more Licenses authorizing the placement or installation of Licensee's facilities in WAA Conduits or Duct Banks; provided WAA shall have the absolute right to refuse to issue any License hereunder whenever WAA determines that the issuance of such License is not possible because of insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. Nothing in this Agreement shall be construed to require WAA to install, retain, extend or maintain any Conduit or Duct Bank that is not needed for WAA's own service requirements. Nothing in this Agreement shall limit, restrict or prohibit WAA from fulfilling any agreement or arrangement regarding Conduits or Duct Banks into which WAA has previously entered, or may enter in the future, with others not a party to this Agreement.

2.5 No Effect on WAA's Right to Convey Property. Nothing contained in this License Agreement or in any License issued hereunder shall in any way affect, restrict or impair the right of WAA to convey, transfer, mortgage, or assign to any other person or entity any interest in real or personal property, including any Conduits or Duct Banks in which Licensee has placed facilities pursuant to Licenses issued under this or other License Agreements; provided, however, that WAA shall give Licensee reasonable advance written notice of such intent to convey.

2.6 No Effect on WAA's Rights to Manage its Own Facilities. This License Agreement shall not be construed as limiting or interfering with WAA's rights,

including but not limited to the rights set forth below, except to the extent expressly provided by the provisions of this License Agreement or Licenses issued hereunder or by other applicable laws, rules or regulations:

- 2.6.1 To locate, relocate, move, replace, modify, maintain, and operate WAA's own facilities within WAA's Conduits and Duct Banks at any time and in any reasonable manner which WAA deems appropriate to serve customers, avail itself of new business opportunities, or otherwise meet its business needs; or
  - 2.6.2 To enter into new License Agreements or arrangements with other persons or entities permitting them to place their facilities in WAA Conduits and Duct Banks; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new License Agreements or arrangements shall not substantially interfere with Licensee's Conduit Occupancy or rights provided by Licenses issued pursuant to this License Agreement.
- 2.7 No Effect on Licensee's Rights to Manage its Own Facilities. This License Agreement shall not be construed as limiting or interfering with Licensee's rights set forth below, except to the extent expressly provided by the provisions of this License Agreement or Licenses issued hereunder or by other applicable laws, rules or regulations:
- 2.7.1 To locate, relocate, move, replace, modify, maintain, and operate its own facilities within WAA's Conduits and Duct Banks at any time and in any reasonable manner which Licensee deems appropriate to serve its customers, avail itself of new business opportunities, or otherwise meet its business needs; or
  - 2.7.2 To enter into new License Agreements or arrangements with other persons or entities permitting Licensee to place its facilities in such other persons' or entities' Conduits; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new License Agreements or arrangements shall not conflict with Licensee's obligations under Licenses issued pursuant to this License Agreement or otherwise conflict with any of WAA's rights.
- 2.8 No Right to Interfere with Facilities of Others. The provisions of this License Agreement or any License issued hereunder shall not be construed as authorizing either party to this License Agreement to rearrange or interfere in any way with any of the other party's facilities, with the facilities of other persons or entities, or with the use of or access to such facilities by such other party or such other persons or entities, except to the extent expressly provided by the

provisions of this License Agreement or any License issued hereunder or by other applicable laws, rules or regulations.

2.8.1 Licensee acknowledges that the facilities of persons or entities other than WAA and Licensee may occupy WAA Conduits and Duct Banks.

2.8.2 WAA shall not (i) attach, or give permission to any Third Parties to attach facilities to existing Licensee facilities, or (ii) subject to the provisions of 16.1, move, disturb, or alter the Licensee Facilities or knowingly permit any third party to do so, without Licensee's prior written consent. In addition, WAA shall not use or knowingly permit others to use the Licensee Facilities or any equipment that interferes with the operation of the Licensee Facilities.

2.8.3 With respect to facilities occupied by Licensee, WAA will give to Licensee sixty (60) days written notice of i) Conduit or Duct Bank extensions or reinforcements, ii) WAA's intention to construct, reconstruct, expand or place such facilities, or iii) WAA's intention not to maintain or use any existing facility and, in the case of an existing facility which WAA elects not to maintain or use, WAA will coordinate with Licensee and appropriate Third Parties to maintain and use such facility. If an emergency requires WAA to construct, reconstruct, expand or replace Conduits or Duct Banks occupied by Licensee, WAA will notify Licensee as soon as reasonably practicable of such proposed construction, reconstruction, expansion or replacement to enable Licensee, if it so desires, to request that Conduits or Duct Banks of greater capacity be utilized to accommodate an anticipated facility need of Licensee.

2.9 Ongoing maintenance and repair of the WAA Conduits and Duct Banks shall be the responsibility of WAA, at WAA's sole cost and expense. WAA shall maintain the WAA conduits and Duct Banks in good working condition, ensuring continuity between Manholes and Handholes, and usable for its intended purpose.

### **3.0 TERM AND TERMINATION OF LICENSE AGREEMENT**

3.1 Unless sooner terminated as herein provided, this License Agreement shall continue in effect for a term (the "Term") of five (5) years from the date hereof. Thereafter, the Term shall continue for as long as Licensee has customers subscribing to services which require the use of Licensee's Facilities. If, after twelve (12) months from the date of the last service provisioning to any customer pursuant to the foregoing sentence, Licensee has not resumed services to any of its customers nor has Licensee received any written request to provide services, then this License Agreement shall terminate. Notwithstanding the foregoing, either party may terminate this License Agreement by giving the other party at least ninety (90) days prior written notice. Such ninety (90) day notice of



termination may be given to take effect at the end of the original five (5) year period or any time thereafter.

- 3.2 Termination of this License Agreement or any Licenses issued hereunder shall not affect Licensee's or WAA's liabilities and obligations incurred hereunder prior to the effective date of such termination.
- 3.3 Subject to the cure period provided below, WAA shall have the right to terminate this entire Agreement or any License issued hereunder whenever Licensee violates, breaches or is in default of any term or condition of this Agreement or any License including but not limited to the following:
  - 3.3.1 Construction, operation or maintenance of Licensee's facility in violation of law or in aid of any unlawful act or undertaking; or
  - 3.3.2 Construction, operation or maintenance of Licensee's facility without the insurance coverage required under this Agreement; or
  - 3.3.3 Non-payment of undisputed fees and charges; or
  - 3.3.4 Use of Licensee's facilities for purposes other than those granted in a License.

Within ten (10) days of Licensee's receipt of notice from WAA, Licensee shall initiate immediate corrective action to remedy any above mentioned condition or other violation of any term or condition of this Agreement and shall confirm in writing to WAA that the cited violations are acknowledged and provide an expeditious plan for their correction. If Licensee fails to discontinue or initiate correction of these violations or fails to give the required confirmation within such ten (10) day period, WAA may immediately terminate this Agreement and any of Licensee's rights hereunder without limiting or restricting any further rights and remedies WAA may have against Licensee.

- 3.4 In the event of termination of this Agreement, WAA may seek the removal of Licensee's facilities provided that Licensee shall be liable for and pay all fees and charges pursuant to the terms of this Agreement to WAA until Licensee's facilities are actually removed.
- 3.5 Even after the termination of this Agreement, each party's responsibility and indemnity obligations shall continue with respect to any claims or demands under this Agreement.
- 3.6 If WAA fails to observe and perform any material term of this Agreement and such failure continues for a period of thirty (30) days after written notice from Licensee, then Licensee may: (A) terminate this Agreement and any License, in

whole or in part, in which event Licensee shall have no further duties or obligations there under, and/or (B) pursue any remedies the Licensee may have under this Agreement, at law or in equity.

#### **4.0 REQUIREMENTS AND SPECIFICATIONS**

- 4.1 Published Standards Incorporated in this License Agreement by Reference. All of Licensee's facilities shall comply with applicable laws, standards or orders now in effect or hereafter issued by WAA or other authority having jurisdiction over such facilities.
- 4.2 Changes in Published Standards. Licensee agrees to rearrange its facilities in accordance with changes in the standards, or if required by law or upon the mutual agreement of the parties.
- 4.3 Requirements Relating to Personnel, Equipment, Material, and Construction Procedures. At Licensee's option, duct clearing, "rodding" or modifications required to grant Licensee access to WAA's Conduits or Duct Banks may be performed by a contractor chosen by Licensee and reasonably acceptable to WAA, who demonstrates compliance with WAA certification requirements. Otherwise, Licensee may request performance by WAA at Licensee's expense and at charges which represent WAA's Costs plus 12% administrative fee.

The parties acknowledge that Licensee, its contractors, and other Persons Acting on Licensee's Behalf will perform work for Licensee (e.g., splicing Licensee's facilities) within WAA's Conduits and Duct Banks. Licensee represents and warrants that neither Licensee nor any Person Acting on Licensee's Behalf shall allow any person to enter WAA's Manholes or Handholes or work within WAA's Conduits or Duct Banks unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the Conduits and Duct Banks and to perform the work safely. Licensee assumes all risk of all such Persons Acting on Licensee's Behalf and engaged in working in Conduits and Duct Banks and holds harmless and releases WAA from all claims, losses, damages and liabilities associated thereto, except to the extent caused by WAA's negligence or willful misconduct.

Licensee acknowledges that all Persons Acting on Licensee's Behalf hereunder are not WAA's employees or agents and Licensee assumes full responsibility for their acts. Licensee shall be solely responsible for the payment of compensation of Licensee's employees assigned to perform services hereunder and such employees shall be informed that they are not entitled to the provision of any WAA benefits. WAA shall not be responsible for payment of workman's compensation, disability benefits, and unemployment insurance or for withholding or paying employment related taxes for any employee of Licensee, but such responsibility shall be solely that of Licensee. In the event that any federal, state

or local government agency, any court or any other applicable entity determines that the personnel provided by Licensee or any permitted subcontractor or assignee of Licensee hereunder are employees of WAA for any purpose, Licensee agrees to indemnify and hold WAA harmless from all liabilities, costs, and expenses (including, but not limited to, reasonable attorneys fees) associated with such determination, except to the extent caused by WAA's negligence or willful misconduct.

- 4.3.1 Licensee's facilities within WAA's Conduits and Duct Banks shall be constructed and placed upon receipt of License as specified in Section 7.1. However, no such License will be required for the inspection, maintenance, repair or non-physical modifications of Licensee's facilities.
- 4.3.2 "Rodding" or clearing of Conduits shall be done only when specific authorization for such work has been obtained in writing in advance from WAA, which authorization shall not be unreasonably withheld by WAA. The parties agree that such "rodding" or clearing shall be performed according to existing industry standards and practices. Licensee may contract with WAA for performance of such work or (at Licensee's option and with WAA concurrence) with a contractor who demonstrates compliance with WAA certification requirements.
- 4.3.3 Licensee assumes all risk for all Persons Acting on Licensee's Behalf. When Licensee or Persons Acting on Licensee's Behalf are working within or in the vicinity of any part of WAA's Conduits and Duct Banks which is located within, under, or adjacent to streets, highways, alleys or other traveled paths, Licensee and all Persons Acting on Licensee's Behalf shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible at all times for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger in accordance with the traffic control plan that must be approved by the WAA prior to the commencement of work. Licensee has sole responsibility for the safety of all Persons Acting on Licensee's Behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes. WAA reserves the right to suspend Licensee's activities on, in or in the vicinity of WAA's Conduits or Duct Banks, if in WAA's reasonable judgment, any hazardous condition arises due to the activity (including both acts and omissions) of Licensee or any Persons Acting on Licensee's Behalf, which suspension shall cease when the condition has been rectified.

- 4.4 Opening of Manholes or Handholes. The following requirements apply to the accessing of WAA Manholes or Handholes when work on Licensee's behalf is being performed within or in the vicinity of WAA's Conduit or Duct Banks.
- 4.4.1 WAA's Manholes or Handholes shall be accessed in a manner only as permitted by WAA's authorized employees or agents, which permission shall not be unreasonably denied or delayed.
  - 4.4.2 Licensee shall notify WAA seventy-two (72) hours in advance of any routine work operation requiring entry into any of WAA's Manholes or Handholes.
  - 4.4.3 WAA's authorized employee or agent shall not direct or control the conduct of Licensee's work at the work site. The presence of WAA's authorized employee or agent at the work site shall not relieve Licensee or personnel performing work on Licensee's behalf of their responsibility to conduct all work operations within WAA's Conduits and Duct Banks in a safe and workmanlike manner.
  - 4.4.4 Although WAA's authorized employee or agent shall not direct or control the conduct of Licensee's work at the work site, WAA's employee or agent shall have the authority to suspend Licensee's work operations within WAA's Conduits and Duct Banks if, in the reasonable discretion of such WAA employee or agent, it appears that any hazardous conditions arise or any unsafe practices are being followed by Licensee or personnel performing work on Licensee's behalf.
- 4.5 OSHA Compliance: Notice to WAA of Unsafe Conditions. Licensee agrees that:
- 4.5.1 Its facilities shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder;
  - 4.5.2 All Persons Acting on Licensee's Behalf including, but not limited to, Licensee's employees, agents, contractors, and subcontractors shall, when working within WAA's Conduits and Duct Banks, comply with regulations thereunder;
  - 4.5.3 Licensee shall establish appropriate procedures and controls to assure compliance with all requirements of this License Agreement; and
  - 4.5.4 Licensee (and any Person Acting on Licensee's Behalf) may report unsafe conditions on, in or in the vicinity of WAA's Conduits or Duct Banks to WAA.

- 4.6 Compliance with Environmental Laws and Regulations. Licensee acknowledges that, from time to time, environmental contaminants may enter WAA's Conduits or Duct Banks and accumulate in Manholes, Handholes or other Conduit facilities. If WAA has knowledge of the presence of such contaminants in a Conduit or Duct Bank for which Licensee has applied for or holds a License, WAA will promptly notify Licensee of such fact. WAA makes no warranties or representations of any kind to Licensee or personnel performing work on Licensee's behalf that WAA's Conduits and Duct Banks or any specific portions thereof will be free from environmental contaminants at any particular time. The acknowledgments and representations set forth in the two preceding sentences are not intended to relieve WAA of any liability which it would otherwise have under applicable law for the presence of environmental contaminants in its Conduit and Duct Bank facilities. Licensee agrees to comply with the following provisions relating to compliance with environmental laws and regulations:
- 4.6.1 Licensee's facilities shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws.
  - 4.6.2 All Persons Acting on Licensee's Behalf including, but not limited to, Licensee's employees, agents, contractors, and subcontractors shall, when working on, within, or in the vicinity of WAA's Conduits and Duct Banks, comply with all applicable federal, state, and local environmental laws including, but not limited to, all environmental statutes, ordinances, rules, and regulations.
  - 4.6.3 Licensee shall establish appropriate procedures and controls to assure compliance with all requirements of this License Agreement.
  - 4.6.4 Licensee and all Persons Acting on Licensee's Behalf shall comply with such standards and practices as WAA may adopt from time to time to comply with environmental laws and regulations. Pursuant to this practice, neither Licensee nor WAA nor Persons Acting on either party's behalf shall discharge water or any other substance from any WAA Manhole, Handhole or other Conduit facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with mutually agreed standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. No such waste material shall be deposited on WAA premises for storage or disposal.
- 4.7 Compliance with Other Governmental Requirements. Licensee agrees that its facilities attached to WAA's facilities shall be constructed, placed, maintained and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. Licensee shall comply

with all statutes, ordinances, rules, regulations and other laws requiring the marking and lighting of aerial wires, cables and other structures to ensure that such wires, cables and structures are not a hazard to aeronautical navigation. Licensee shall establish appropriate procedures and controls to assure such compliance by all Persons Acting on Licensee's Behalf including, but not limited to, Licensee's employees, agents, contractors and subcontractors.

- 4.8 Differences in Standards or Specifications. To the extent that there may be differences in any applicable standards or specifications referred to in Section 4.0, the most stringent standard or specification will apply.
- 4.9 Licensee Solely Responsible for the Condition of Its Facilities. Licensee shall be responsible at all times for the condition of its facilities and its compliance with the requirements, specifications, rules, regulations, ordinances and laws specified above. In this regard, WAA shall have no duty to Licensee to inspect or monitor the condition of Licensee's facilities (including, but not limited to, splices and other facilities connections) located within WAA's Conduits and Duct Banks. WAA may, however, conduct such inspections and audits of its Conduits and Duct Banks as WAA determines reasonable or necessary in its sole judgment. Such inspection and audits shall be conducted at WAA's expense with the exception of (1) follow-up inspection to confirm remedial action after an observed Licensee violation of the requirements of this License Agreement; and (2) inspection of Licensee facilities in compliance with a specific mandate of appropriate governmental authority, for which inspections the cost plus 12% administrative fee shall be borne by Licensee on a pro rata basis based on the ratio of the Licensee's facilities compared to the total facilities being inspected. Observed safety hazards or imminent facility failure conditions of another party shall be reported to the affected party where such party can be readily identified.
- 4.10 Efficient use of Conduit. WAA, at its option, may install Inner-Ducts to increase Duct space in existing Conduit. The full complement of Inner-Ducts will be installed which can be accommodated under sound engineering principles. The number of Inner-Ducts which can reasonably be installed will be determined by WAA.
- 4.11 Locates. Licensee is responsible for locates of its facilities as required by the Kansas One Call system or its successors.

## **5.0 ADDITIONAL LEGAL REQUIREMENTS**

- 5.1 Third Party Property Owners. Licenses granted under this License Agreement authorize Licensee to place facilities in Conduits and Duct Banks owned or controlled by WAA, but do not affect the rights of landowners to control terms and conditions of access to their property.

- 5.1.1 Licensee agrees that neither Licensee nor any Persons Acting on Licensee's Behalf including, but not limited to, Licensee's employees, agents, contractors, or subcontractors shall engage in any conduct which damages property in the vicinity of WAA's Conduits and Duct Banks, interferes in any way with the use or enjoyment of public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including, but not limited to, a hazard or nuisance resulting from any abandonment or failure to remove Licensee's facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while Acting on Licensee's Behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- 5.2 Required Licenses and Certificates. Licensee shall be responsible for obtaining any building licenses, permits, authorizations or certificates from governmental authorities necessary to construct, operate, maintain and remove its facilities on public or private property.
- 5.2.1 Licensee shall not place its facilities in WAA's Conduits or Duct Banks located on any property for which Licensee or WAA has not first obtained all required authorizations.
- 5.2.2 WAA shall have the right to request evidence that all appropriate authorizations have been obtained. However, such request shall not delay WAA's Pre-License Work.
- 5.3 Lawful Purposes. All facilities placed by Licensee in WAA's Conduits and Duct Banks must serve a lawful purpose and the uses made of Licensee's facilities must comply with all applicable federal, state, and local laws and with all federal, state, and local regulatory rules, regulations and requirements. In this regard, Licensee shall not utilize any facilities occupying WAA's Conduits and Duct Banks for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.
- 6.0 CONSTRUCTION OF WAA CONDUITS AND DUCT BANKS**
- 6.1 Existing Conduits. Portions of WAA Conduits and Duct Banks have been constructed and are available for use. Some Conduits located on Airport Premises may have been installed by the Licensee as part of past construction events. By entering into this License Agreement, Licensee agrees to immediately transfer ownership of all Licensee Conduits to WAA unless specifically exempted from transfer in an individual License documenting Existing Licensee Facilities as described in Section 2.2. Except as otherwise set forth in

an individual License or noted herein, such transferred Conduit will be controlled, maintained, managed and subject to fees and charges as all other parts of the WAA Conduits and Duct Banks under this License Agreement.

- 6.2 Completeness of Conduits and Duct Banks. WAA intends to extend the Conduits and Duct Banks as opportunities arise. Installation of additional Conduits and Duct Banks will be accomplished by WAA or, at the discretion of WAA, the Licensee may be requested to include the extension or installation of the Conduits and Duct Banks as part of the Licensee's construction project. In return for Licensee's extension or installation of the Conduits or Duct Banks, the business arrangement for the fees and charges related to such Licensee extended or installed Conduits and Duct Banks will be addressed in the individual License. Such Licensee installed Conduits and Duct Banks will be owned, controlled, maintained, managed and subject to any other applicable fees and charges as all other parts of the WAA Conduits and Duct Banks under this License Agreement.

## **7.0 PRE-LICENSE PROVISION OF RECORDS AND INFORMATION**

- 7.1 Licenses Required. Before placing any facilities in WAA's Conduits or Duct Banks, Licensee must first execute a License Agreement and then apply for and receive a written License from WAA. WAA shall not unreasonably deny or delay issuance of any License.
- 7.2 Pre-License Provision of Records and Information. After a License Agreement has been executed, an application for a License will be completed on forms provided by WAA. In no event shall Licensee install any facilities without first applying for and obtaining a License pursuant to the applicable requirements set forth in this Agreement. In completing the request for records, the Licensee shall identify with reasonable specificity the geographic area for which facilities are required, the types and quantities of the required facilities and the required in-service date. WAA shall provide Licensee with information regarding the types, quantity and location (which may be provided by provision of route maps) and availability of WAA Conduits and Duct Banks located within the geographic area specified by Licensee. WAA shall provide the Licensee with the current published WAA standards that will apply to the described proposed project. Provision of information under the terms of this License Agreement shall include the right of Licensee's employees or agents to inspect engineering records or drawings which pertain to those facilities within the geographic area identified in Licensee's request. Such inspection shall be done at a time and place mutually agreed upon by the parties. The provision of records and information is a billable service to the Licensee and must be paid by the due date on the invoice from WAA.



- 7.3 No Warranty of Record Information. Licensee acknowledges that records and information provided by WAA pursuant to Section 7.2 may not reflect field conditions and that physical inspection is necessary to verify the presence and condition of outside plant facilities. In providing such records and information, WAA assumes no liability or responsibility to Licensee or any Third Party for errors/omissions contained therein.

## **8.0 APPLICATION FOR LICENSE**

- 8.1 Application Process. To apply for a License under this License Agreement, Licensee shall submit to WAA two signed copies of an Application for Conduit Occupancy License Form. See Appendix I. WAA will process License applications in the order in which they are received; provided, however, that when Licensee has multiple applications on file with WAA, Licensee may designate its desired priority of completion of Pre-License Work and Make-Ready Work with respect to all such applications.

8.1.1 Each application for a License under this License Agreement shall specify the proposed route of Licensee's facilities and identify the Conduits and Duct Banks along the proposed route in which Licensee desires to place its facilities, and describe the physical size, type and jacket material of the cable which Licensee desires to place in each Conduit or Duct Bank. Documented criteria for exterior utility modifications and improvements must be followed for any facilities the Licensee needs to place in order to access the Conduits and Duct Banks. Such criteria are available from the WAA Operational point of contact identified in Section 29.1.

8.1.2 Each application for a License under this License Agreement shall be accompanied by a proposed (or estimated) construction schedule containing the information specified below in Section 12.1 of this License Agreement.

- 8.2 License Applications for Multiple Cables, Multiple Services or Placing Additional Cables and Replacement of Facilities. Licensee may include multiple cables in a single License application and multiple services (e.g., CATV and non-CATV services) may be provided by Licensee in the same cable Sheath. If Licensee desires to place additional cables in Conduits or Duct Banks which are already occupied, or to replace existing facilities with new facilities substantially different from those described in Licenses in effect, Licensee must apply for and receive a new License.

## **9.0 PROCESSING OF APPLICATIONS FOR LICENSE AND PRE-LICENSE WORK**

- 9.1 Multiple Applications from Different Licensees. Licensee acknowledges that multiple Applicants, including WAA, may seek to place their facilities in WAA's Conduits and Duct Banks at or about the same time and therefore the Make-Ready Work required to prepare WAA's facilities to accommodate multiple Applicants may differ from the Make-Ready Work required to accommodate a single Applicant. Additionally, issues relating to the proper apportionment of costs arise in multiple Applicant situations that do not arise in single Applicant situations, and that cooperation and negotiations between all Applicants and WAA may be necessary to resolve disputes involving multiple applications for permission to place facilities in the same Conduits or Duct Banks. All applications will be processed on a first-come, first served basis.
- 9.2 Pre-License Survey. After Licensee has submitted its written Application for a License, a Pre-License Survey (including a field inspection) will be performed by WAA, with a representative of the Applicant, to determine whether WAA's Conduits and Duct Banks, in its present condition, can accommodate Licensee's facilities, without interfering with the ability of WAA or any other authorized person or entity to place within or connect to WAA's Conduits and Duct Banks. WAA shall provide Licensee at least forty-eight (48) hours notice prior to initiating a field survey/inspection. Licensee's employees or agents shall be permitted to enter WAA Manholes/Handholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours notice to WAA, with a WAA representative present and at Licensee's expense. If Licensee gives its prior written consent, the determination of Conduit and Duct Banks availability may include the "rodding" of Conduits at Licensee's expense.
- 9.2.1 The purpose of the Pre-License Survey is to determine whether Licensee's proposed Occupancy of WAA's Conduits and Duct Banks will interfere with use of WAA facilities by WAA and others with facilities occupying, connected to or attached to WAA's Conduits and Duct Banks; and to provide information to Licensee for its determination of whether WAA's Conduits or Duct Banks are suitable for Licensee's use.
- 9.2.2 Based on information provided by WAA, Licensee shall determine whether WAA's Conduit and Duct Bank facilities are suitable to meet Licensee's needs.
- 9.2.3 WAA may not unreasonably refuse to continue to process an Application based on WAA's determination that Licensee's proposed use of WAA's facilities will not be in compliance with applicable requirements, specifications, rules, regulations, ordinances and laws. Licensee shall be responsible for making its own independent determination that its use of such facilities will be in compliance with such requirements, specifications, rules, regulations, ordinances and laws. Licensee acknowledges that WAA is not explicitly or implicitly warranting to Licensee that Licensee's

proposed use of WAA's facilities will be in compliance with applicable requirements, specification, rules, regulations, ordinances and laws.

- 9.3 Pre-License Work. The processing of an Application to determine whether there is adequate capacity to accommodate Licensee's facilities and to determine if Make-Ready Work is required is termed Pre-License Work. It includes a review of records, maps and staking sheets, making field visits, preparing Make-Ready Work order estimates, notifying other persons and entities of the Licensee's Application, and coordinating the relocation/rearrangement of WAA and/or other Licensed facilities. Pre-License Work is a billable service to the Licensee and the cost of which shall be presented to Licensee in writing prior to processing the Application. An advance payment for the estimated cost, including a 12% administrative fee, of the Pre-License Work is required prior to processing the Application. Upon completion of the Pre-License Work, Licensee will be billed for the difference between the actual cost of the Pre-License Work less the advance payment. If there is a shortfall, the difference must be paid by Licensee prior to issuance of a License. If there is an overage, the difference shall be refunded by WAA to Licensee within thirty (30) days of the date the Pre-License Work is completed.

## **10.0 MAKE-READY WORK**

- 10.1 Work Performed by WAA. Make-Ready Work performed by WAA to accommodate Licensee's facilities shall be included in the normal work load schedule of WAA. Licensee will not be entitled to priority, advancement, or preference over other work to be performed by WAA in the ordinary course of WAA's business.

10.1.1 If Licensee desires Make-Ready Work to be performed on an expedited basis and WAA agrees to perform the work on such a basis, WAA shall recalculate the estimated Make-Ready charges at 1.5 times the full cost of Make-Ready work by the WAA. If Licensee accepts WAA's offer, Licensee shall pay such additional charges.

- 10.2 Advance Payment Required for Make-Ready Work. An advance payment for estimated Make-Ready Work is payable prior to the commencement of any actual Make-Ready Work. Upon completion of Make-Ready Work, Licensee will be billed for the difference between the actual Make-Ready Work less the advance payment. If there is a shortfall, the difference must be paid by Licensee prior to issuance of a License. If there is an overage, the difference must be refunded by WAA to Licensee within thirty (30) days of the date the Make Ready Work is completed.
- 10.3 Work Performed by Certified Contractors. Licensee may arrange for all Make-Ready Work associated with its License Application to be completed by

contractors certified by WAA. Certification shall be granted based upon reasonable and customary criteria employed by WAA in the selection of its own contract work.

- 10.4 Negotiations and Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Licensee shall be solely responsible for negotiating with entities other than WAA for Make-Ready Work and rearrangement of facilities located in or connected to WAA's Conduits and Duct Banks and shall be responsible for paying all charges incurred by them in transferring or rearranging their facilities to accommodate the placement of Licensee's facilities in WAA's structures.
- 10.5 Completion of Make-Ready Work. Make-Ready Work will be considered completed at the time all Make-Ready Work has been completed, inspected, approved and payment for all charges has been received.

## **11.0 ISSUANCE OF LICENSES**

- 11.1 License. If Licensee's Application for Conduit Occupancy License is approved, and all required Make-Ready Work completed, WAA will execute and return a License to Licensee, as appropriate, authorizing Licensee to place the specified facilities in WAA's Conduits or Duct Banks.

11.1.1 Each License issued under this License Agreement shall authorize Licensee to place or maintain in WAA's Conduits or Duct Banks only those facilities specifically described in the License, and no others.

11.1.2 Each License issued pursuant to this License Agreement shall incorporate all terms and conditions of this License Agreement.

## **12.0 CONSTRUCTION OF LICENSEE'S FACILITIES**

- 12.1 Construction Schedule. Promptly after the issuance of a License, Licensee shall provide WAA with an updated construction schedule and shall thereafter keep WAA informed of changes in the construction schedule. Construction schedule information required by this License Agreement shall include, at a minimum, the following:

12.1.1 The name, title, business address, and business telephone number of the manager responsible for construction of the facilities;

12.1.2 The names of each contractor and subcontractor which will be involved in the construction activities;

12.1.3 The estimated dates when construction will begin and end; and

- 12.1.4 The approximate dates when Licensee or Persons Acting on Licensee's Behalf will be performing construction work in connection with the placement of Licensee's facilities in WAA's Conduits and Duct Banks.
- 12.2 Additional Pre-construction Procedures. The following procedures shall apply before Licensee places facilities in WAA's Conduits or Duct Banks:
- 12.2.1 Licensee shall give written notice of the type of facilities which are to be placed; and
- 12.2.2 Unless otherwise agreed between the parties, WAA shall designate the particular Conduits or Duct Banks or inner-Ducts (if available) to be occupied by Licensee's facilities, the location and manner in which Licensee's facilities will enter and exit WAA's Conduits and Duct Banks, and specific location and manner of installation of any associated equipment which is permitted by WAA to occupy the Conduits and Duct Banks. Licensee may not occupy a Conduit or Duct Bank other than the specified Conduits or Duct Bank without the express written consent of WAA. WAA shall provide to Licensee space in Manholes for racking and storage of up to fifty (50) feet of cable, provided space is available.
- 12.3 WAA Not Responsible for Constructing or Placing Facilities. WAA shall have no obligation to construct any facilities for Licensee or to place Licensee's facilities in WAA's Conduits and Duct Banks except to the extent expressly provided in this License Agreement, any License issued hereunder, or by any other applicable law.
- 12.4 Licensee Responsible for Constructing and Placing Facilities. Licensee shall be responsible for constructing its own facilities and placing them in Conduits or Duct Banks at Licensee's sole cost and expense. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of Licensee's facilities and for directing the activities of all Persons Acting on Licensee's Behalf while they are physically present in any part of WAA's Conduits or Duct Banks, or in the vicinity of WAA's Conduits or Duct Banks. Licensee shall not permit any mechanic's lien, materialmen's lien, or any other lien, claim or security interest to attach to or encumber any of WAA's real or personal property at any time. WAA shall have the right to require Licensee to provide to WAA a performance bond in the amount of not less than \$15,000.00 in connection with each Application. The bond shall be with an entity and in a form acceptable to WAA. The purpose of the bond is to insure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to WAA which arise by reason of the

construction, operation, maintenance or removal of Licensee's facilities in or about WAA Conduits and Duct Banks. Right to require a performance bond may be waived in negotiation of the business arrangement addressed in 6.2.

- 12.5 Compliance with Applicable Standards, Health and Safety Requirements and other Legal Requirements. Licensee shall construct its facilities in accordance with the provisions of this License Agreement and all Licenses issued hereunder.
- 12.5.1 Licensee shall construct and place its facilities in compliance with all Requirements and Specifications set forth above in this License Agreement.
- 12.5.2 Licensee shall satisfy all Legal Requirements set forth above in this License Agreement.
- 12.5.3 Licensee shall not authorize any person acting on Licensee's behalf to perform any work within WAA's Conduits or Duct Banks without first verifying, to the extent practicable, on each date when such work is to be performed, that the condition of the Conduits and Duct Banks are suitable for the work to be performed. If Licensee or any Person Acting on Licensee's Behalf determines that the condition of the Conduits or Duct Banks are not suitable for the work to be performed, Licensee shall notify WAA of the condition of the Conduit or Duct Bank in question and shall not proceed with construction activities until Licensee is satisfied that the work can be safely performed.
- 12.6 Post Construction Notice. Licensee shall provide WAA with information to assure WAA that construction has been performed in accordance with all applicable standards and requirements. Licensee shall provide WAA with "as-builts" within thirty (30) days after construction completion. "As-builts" will be provided electronically in the current version of AutoCad plus one hard copy.
- 12.7 Manhole and Handhole Break-Outs. Licensee shall be permitted to add Conduit ports to WAA Manholes and Handholes when existing Conduits and Duct Banks do not provide the pathway connectivity needed by Licensee; provided the structural integrity is maintained, and sound engineering judgment is employed.
- 12.8 Access to Conduits and Duct Banks. Except for emergency maintenance as set forth in Section 17, access to Conduits and Duct Banks by Licensee for construction or maintenance activities will be allowed, under escort by a WAA employee or approved representative of the WAA. WAA will provide escort within a reasonable amount of time of Licensee request. Licensee and its employees, agents and contractors are prohibited from accessing any portion of the Conduits and Duct Banks which has not been previously authorized under a

License. Any violation is subject to an Unauthorized Access Fee. See Schedule I.

### **13.0 FEES, CHARGES AND BILLING**

13.1 Application Fee. Each Applicant shall pay a one-time \$250.00 application fee associated with this License Agreement. There is no application fee for individual license requests.

13.2 License Fees. Each License issued pursuant to this License Agreement shall provide for an annual occupancy fee. See Schedule I. License Fees will not be applied to accesses solely for providing services to the WAA.

Facility access as applied to the annual occupancy fee in a single tenant facility will represent each physical point Licensee uses to access the facility. In a multi-tenant facility, the annual occupancy fee will apply per tenant served.

13.3 Billing. License fees commence on the date a License is issued and are advance billed. Such fees cease as of the final day in which the Occupancy is physically removed. A one-month minimum charge is applicable to all Licenses.

13.4 Notice of Rate and Computation of Charges. On or about November 1 of each year, WAA will notify Licensee by certified mail, return receipt requested, of the annual conduit occupancy fees to be applied in the subsequent calendar year. The letter of notification shall be incorporated in, and governed by terms and conditions of, this License Agreement. Occupancy fees shall be applied to the Conduit, Duct Bank or Inner-Duct facility accesses for which Licenses have been issued.

13.5 Receipt of Payment. All charges are due upon the due date of invoice or bill from WAA. Undisputed payments not received with thirty (30) days after receipt of an invoice from WAA shall be considered delinquent. New Licenses will not be approved for Applicants which have delinquent obligations owed to WAA.

13.6 Assurance of Payment. If Licensee fails to demonstrate credit worthiness, Licensee may be required to furnish a bond, letter of credit or other evidence of financial security having a minimum face amount of \$20,000. Such bond, letter of credit or other security shall be in a form satisfactory to WAA and may be increased from time to time as reasonably required by WAA to guarantee the performance of all obligations of Licensee hereunder. The amount of the bond, letter of credit or other security shall not operate as a limitation upon the obligations of Licensee hereunder.

#### **14.0 USE AND ROUTINE MAINTENANCE OF LICENSEE'S FACILITIES**

- 14.1 Routine Maintenance of Licensee's Facilities. Each License granted under this License Agreement authorizes Licensee to engage in routine maintenance of Licensee's facilities located in WAA's Conduits and Duct Banks pursuant to such License. Except for emergency maintenance as set forth in Section 17, Licensee shall give reasonable, but not less than seventy-two (72) hours notice to WAA before performing any work, whether or not of a routine nature, in WAA's Conduits or Duct Banks.
- 14.2 Licensee Responsible for Maintenance of Licensee's Facilities. Licensee shall maintain its facilities in accordance with the provisions of this License Agreement (including but not limited to all requirements set forth above in this License Agreement) and all Licenses issued hereunder. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of Licensee's facilities and assumes all responsibility for directing the activities of all Persons Acting on Licensee's Behalf while they are physically present within WAA's Conduits or Duct Banks or in the immediate vicinity of such Conduits or Duct Banks.
- 14.3 WAA Not Responsible for Maintaining Licensee's Facilities. WAA shall have no obligation to maintain any Licensee facilities which Licensee has placed in WAA Conduits and Duct Banks.
- 14.4 Information Concerning the Maintenance of Licensee's Facilities. Promptly after the issuance of a License permitting Licensee to place facilities in Conduits or Duct Banks, Licensee shall provide WAA with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of Licensee's facilities, and shall thereafter notify WAA of changes to such information. The manager responsible for routine maintenance of Licensee's facilities shall, on WAA's request, identify any contractor, subcontractor, or other person performing maintenance activities on Licensee's behalf at a specified site and shall, on WAA's request, provide such additional documentation relating to the maintenance of Licensee's facilities as reasonably necessary to demonstrate that Licensee and all Persons Acting on Licensee's Behalf are complying with the requirements of this License Agreement and Licenses issued hereunder.
- 14.5 Identification of Personnel Authorized to Have Access to Licensee's Facilities. All personnel authorized to have access to Licensee's facilities shall, while working in WAA's Conduits or Duct Banks, or in the vicinity of such Conduits or Duct Banks, carry with them suitable identification and shall, upon request of any WAA employee, Airport tenant or regulatory representative, produce such identification.



## **15.0 MODIFICATION AND REPLACEMENT OF LICENSEE'S FACILITIES**

- 15.1 Notification of Planned Modification or Replacement of Facilities. Pursuant to Application for License procedures specified in Section 8.0 of this License Agreement, Licensee shall, when practical, notify WAA in writing at least 60 days before relocating, replacing or otherwise modifying its facilities located in any WAA Conduits or Duct Banks. The notice shall contain sufficient information to enable WAA to determine whether the proposed addition, relocation, replacement, or modification is permitted under Licensee's present License or requires a new or amended License.
- 15.2 Make-Ready Caused by Licensee's Request. If Licensee's request to modify its facilities located in any WAA Conduits or Duct Banks, requires WAA and/or other Licensees to rearrange their respective facilities in order for Licensee to make said modifications, Licensee shall advise WAA of the Make-Ready Work it believes necessary to enable the accommodation of Licensee's facilities and be subject to the terms set forth in Section 10.0 of this Agreement.
- 15.3 New or Amended License Required. A new or amended Application for License as per Section 8.2 will be required if the proposed addition, relocation, replacement, or modification:
- 15.3.1 Requires that Licensee use additional space in WAA Conduits or Duct Banks (including but not limited to any additional Conduits, Inner-Ducts, or more space in any Manhole or Handhole) on either a temporary or permanent basis; or
  - 15.3.2 Results in the size or location of Licensee's facilities in WAA's Conduits or Duct Banks being different from those described and authorized in Licensee's present License (e.g. different Conduit, Duct Bank or size increase causing a need to recalculate occupancy).

## **16.0 REARRANGEMENT OF FACILITIES**

- 16.1 Rearrangement of Licensee's Facilities at WAA's Request. Licensee acknowledges that, from time to time, it may be necessary or desirable for WAA to relocate, reconstruct, or modify portions of its Conduits or Duct Banks or rearrange facilities contained therein and that such changes may be necessitated by WAA's business needs and that it is clear the beneficiary of such rearrangement is WAA or a WAA tenant not a party to a License Agreement. In these instances, Licensee agrees that Licensee will, upon WAA's request, participate with WAA (and other Licensees) in the relocation, reconstruction, or modification of WAA's Conduits and Duct Banks or facilities rearrangement. Licensee is responsible for the cost of any such rearrangement of Licensee's

facilities but at no cost to WAA, as needed to accommodate said relocation, reconstruction or modification of WAA's Conduits and Duct Banks or facilities rearrangement. Licensee shall not pay any cost for the relocation, reconstruction, or modification of WAA's Conduits or Duct Banks. In the event that WAA receives third party funding to pay for the costs of any relocation, reconstruction or modification of WAA's Conduits or Duct Banks, WAA shall make such third party funds in excess of WAA's cost of such relocation, reconstruction or modification, available to pay for or reimburse Licensee on a pro rata basis with other Licensees for any rearrangement of Licensee's facilities to accommodate such relocation, reconstruction or modification of WAA's Conduits or Duct Banks.

16.1.1 Licensee shall make all rearrangements of its facilities within such a period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption to a Licensee customer.

16.1.2 If Licensee fails to make the required rearrangements within the time requested and prescribed or within such extended periods of time as may be granted by WAA in writing, WAA may perform such rearrangements with written notice to Licensee, and Licensee shall reimburse WAA for actual costs and expenses incurred by WAA plus a 12% administrative fee in connection with the rearrangement of Licensee's facilities; provided, however, that nothing contained in this License Agreement or License issued hereunder shall be construed as requiring Licensee to bear any costs and/or expenses which, under applicable federal or state laws or regulations, are to be allocated to persons or entities other than Licensee. Licensee shall have the right to terminate this Agreement in the event the cost to relocate the Licensee's Facilities are unreasonable, as determined by Licensee in its sole discretion. WAA shall use commercially reasonable efforts to avoid any relocation of Licensee's Facilities and to minimize any costs related to the same.

16.1.3 Any such rearrangement of the Conduits or Duct Banks by WAA shall incorporate facilities meeting or exceeding the technical specifications for the facilities being replaced. In the event WAA's rearrangement may be service impacting to the Licensee's facilities, WAA will provide as much advance notice as possible but not less than sixty (60) day written notice prior to the rearrangement activity.

16.2 Rearrangement of Licensee's Facilities at Request of Another Licensee. Licensee acknowledges that, from time to time, it may be necessary to rearrange its facilities on behalf of the business needs of another licensee. Any work to be performed to accommodate the requesting licensee shall be negotiated, coordinated and reimbursed directly between the Licensee and the requesting

licensee; provided, however, that WAA shall be advised of such request and shall determine, in the exercise of sound engineering judgment whether or not Make-Ready Work is necessary or possible or if modification of any license is necessary. Nothing in this Agreement shall mandate the Licensee to incur unreasonable unreimbursed costs related to the rearrangement of its facilities at the request of another licensee.

## **17.0 EMERGENCY REPAIRS**

- 17.1 Licensee Responsible for Emergency Repairs to its Own Facilities. In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices which will enable it to make such emergency repairs including arrangements for access to WAA Conduits or Duct Banks for Emergency Repairs. Licensee shall have twenty four (24) hour access to the Conduits and Duct Banks in order to make Emergency Repairs. As soon as Licensee becomes aware of a need for Emergency Repairs, Licensee will contact WAA's maintenance personnel using the following twenty four (24) hour emergency number: 316-946-4740 (Airport Public Safety Division) or as provided in writing to Licensee from time to time. If WAA is unavailable, Licensee is authorized to proceed with access to the Conduits and Duct Banks to complete any necessary Emergency Repairs, provided that Licensee complies with all existing and future WAA safety and access requirements. WAA shall be under no obligation to perform any repair or service restoration work of any kind with respect to Licensee's facilities.

## **18.0 INSPECTION BY WAA OF LICENSEE'S FACILITIES**

- 18.1 WAA's Right to Make Inspections. WAA shall have the right to make inspections at any time of any part of Licensee's facilities occupying any WAA Conduits or Duct Banks for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this License Agreement and Licenses hereunder; provided that such inspections must be non-invasive (e.g., no splice cases may be opened). Such inspections shall be conducted at WAA's expense provided; however, that Licensee shall bear the cost of inspections as specified in Section 4.9.
- 18.2 No Duty to Licensee. Neither the act of inspection by WAA of Licensee's facilities, nor any failure to inspect such facilities, shall operate to impose on WAA any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability under this License Agreement.

## **19.0 NOTICE OF NONCOMPLIANCE**

- 19.1 Notice of Noncompliance. If, at any time, WAA determines that Licensee's facilities or any part thereof have not been placed or maintained or are not being

used in accordance with the requirements of this License Agreement, WAA may send written notice to Licensee specifying the alleged noncompliance. Licensee agrees to acknowledge receipt of the notice as soon as practicable. If Licensee does not dispute WAA's assertion that such facilities are not in compliance, Licensee agrees to provide WAA with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within thirty (30) days following receipt of written notice, and to notify WAA in writing when the facilities have been brought into compliance.

- 19.2 Disputes over Alleged Noncompliance. If Licensee disputes WAA's assertion that Licensee's facilities are not in compliance, Licensee shall notify WAA in writing within seven (7) days of receipt of written notice of the basis for Licensee's assertion that its facilities are in compliance.
- 19.3 Failure to Bring Facilities Into Compliance. If Licensee has not brought the facilities into compliance within the thirty (30) day time period, or not provided WAA with proof sufficient to persuade WAA that WAA erred in asserting that the facilities were not in compliance, and if WAA determines in good faith that the alleged noncompliance causes or is likely to cause damage or pose a hazardous condition to WAA's facilities or those of other Licensees, WAA may, at its option and Licensee's expense, take such non-service affecting steps as may be required to bring Licensee's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this License Agreement or terminate the License in accordance with the terms set forth herein.
- 19.4 Correction of Conditions by WAA. If WAA elects to bring Licensee's facilities into compliance, the provisions of this License Agreement shall apply.
- 19.4.1 WAA will, whenever practicable, notify Licensee in writing before performing such work. The written notice shall describe the nature of the work to be performed and WAA's schedule for performing the work.
- 19.4.2 If Licensee's facilities have become detached or partially detached from supporting racks or wall supports located within a WAA Manhole, WAA may, at Licensee's expense, reattach them but shall not be obligated to do so. If WAA does not reattach Licensee's facilities, WAA shall endeavor to arrange with Licensee for the reattachment of any facilities affected.
- 19.4.3 WAA shall, as soon as practicable after performing the work, advise Licensee in writing of the work performed or action taken. Upon receiving such notice, Licensee shall inspect the facilities and take such steps as Licensee may deem necessary to insure that the facilities meet Licensee's performance requirements.

- 19.5 Licensee to Bear Expenses. Licensee shall bear all expenses plus a 12% administrative fee arising out of or in connection with any work performed to bring Licensee's facilities into compliance with this License Agreement; provided however, that nothing contained in this License Agreement or License issued hereunder shall be construed as requiring Licensee to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Licensee.

## **20.0 UNAUTHORIZED OCCUPANCY OR UTILIZATION OF WAA'S FACILITIES**

- 20.1 Licensing or Removal of Unauthorized Attachments. If any of Licensee's facilities shall be found occupying Conduits or Duct Banks for which no License is outstanding, WAA shall provide Licensee with notice of the same. Without prejudice to its other rights or remedies under this License Agreement, including termination of Licenses, WAA may require Licensee to submit in writing, within thirty (30) days after receipt of such written notification from WAA of the unauthorized Conduit or Duct Bank Occupancy, a Conduit Occupancy License application. If such application is not received by WAA within a specified time period, Licensee may be required at WAA's option to remove its unauthorized Conduit or Duct Bank Occupancy within sixty (60) days of the final date for submitting the required application, or WAA may, at WAA's option, remove Licensee's facilities without liability, and the expense of such removal shall be borne by Licensee. In addition to an Unauthorized Access Fee as reflected in Schedule I, Occupancy charges for any such unauthorized Conduit or Duct Bank Occupancy shall be equal to applicable License fees and charges which would have been payable from and after the date such facilities were first placed in WAA's Conduits or Duct Bank, if Licensee provides reasonable documentation in the License Application. If Licensee is unable to provide such reasonable documentation, then Licensee agrees to all applicable fees in Schedule I for a term of three (3) years.

- 20.1.1 Nothing contained in the License Agreement or any License issued hereunder shall be construed as requiring Licensee to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Licensee.

- 20.2 No Implied Waiver or Ratification of Unauthorized Use. No act by WAA with regard to said unlicensed use shall be deemed as a ratification of the unlicensed use; and if any License should be subsequently issued, said License shall not operate retroactively or constitute a waiver by WAA of any of its rights or privileges under this License Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this License Agreement in regard to said unauthorized use from its inception.

## **21.0 REMOVAL OF LICENSEE'S FACILITIES**

21.1 Conduit Occupancy. Licensee, at its expense, will remove its communications facilities from Conduits or Duct Banks within sixty (60) days after:

21.1.1 Termination of the License covering such Conduit or Duct Bank Occupancy; or

21.1.2 The date Licensee replaces its existing facilities in one Conduit with substitute facilities in another Conduit; or

21.1.3 Licensee's Facilities are determined to be abandoned by the Licensee; or

21.1.4 WAA determines there is a need for inactive Licensee Facilities to be removed.

21.2 Failure to Remove. If Licensee fails to remove its facilities (other than the Buried Cable) within the specified period, WAA shall have the right to remove such facilities at Licensee's expense including a 12% administrative fee and without any Liability on the part of WAA for damage or injury to such facilities except to the extent caused by negligence or intentional misconduct of WAA.

21.3 Continuing Responsibility for Fees and Charges. Licensee shall remain liable for and pay to WAA all fees and charges pursuant to provisions of this License Agreement until all of Licensee's facilities are physically removed from WAA's Conduits or Duct Banks.

21.4 Abandonment of Licensee's Facilities. At the sole option of the WAA, Licensee may be allowed to abandon Licensee's Facilities in place and relinquish ownership to WAA, at no cost to WAA. Application of Fees and Charges will terminate upon the completed execution of a transfer order negotiated between the parties to this Agreement.

21.5 Assurance of Removal. To provide security for removal of Licensee facilities applicable under 21.1, Licensee acknowledges that the issuance of new and renewal Licenses under this License Agreement will be suspended until the situation has been remedied.

## **22.0 INSURANCE**

22.1 Licensee shall obtain and maintain insurance, including endorsements insuring the contractual liability and indemnification provisions of this License Agreement, issued by an insurance carrier licensed to do business in the State of Kansas and having an A.M. Best rating of A minus or better, or in the alternative, reasonably satisfactory to WAA.

- 22.2 Licensee shall maintain the following amounts of insurance in compliance with Section 22.1 above:
- 22.2.1 Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - 22.2.2 Umbrella or Excess Liability Insurance with limits of not less than \$5,000,000 per occurrence and in the aggregate.
  - 22.2.3 Workers Compensation Insurance in statutory amounts and Employers Liability Insurance in the amount \$1,000,000 per accident.
  - 22.2.4 Automobile Liability insurance covering any auto with combined single limits of \$1,000,000.
- 22.3 WAA and the City of Wichita shall be named as an additional insured on the policies described under Sections 22.2.1, 22.2.2, and 22.2.4. Licensee shall submit to WAA certificates by each company insuring Licensee with respect to any insurance required hereunder, such certificate(s) to specify the coverage provided and that such company will not cancel any such policy of insurance issued to Licensee except after thirty (30) days written notice to WAA.
- 22.4 All Insurance required in accordance with Sections 22.2 and 22.3 must be effective before WAA will authorize employees to enter WAA buildings or Manholes as part of the Pre-License Provision of Records and Information. Required insurance shall remain in force until such Licensee's facilities have been removed from all such Conduits and Duct Banks.

### **23.0 INDEMNIFICATION, LIMITATION ON DAMAGES AND DISCLAIMER OF LIABILITY AND WARRANTIES**

- 23.1 WAA shall exercise reasonable care to avoid damaging the communications facilities of the Licensee and shall report to the Licensee the occurrence of any such damage caused by WAA's employees, agents or contractors. WAA agrees to reimburse the Licensee for all reasonable costs, including reasonable attorney's fees through appeals, incurred by the Licensee plus a 20% emergency administrative fee for the physical repair of such facilities damaged by WAA, its employees, agents, contractors, subcontractors or invitees. However, WAA shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's facilities, or for any special, indirect, or consequential damages arising in any manner, including WAA's negligence, out of the use of Conduits or Duct Banks or WAA's actions or omissions in regard thereto.

- 23.2 WAA shall indemnify, protect and hold harmless Licensee, its directors, officers, employees and agents from and against any and all claims, demands, causes of action, damages and costs, including reasonable attorney's fees through appeals incurred by Licensee, its employees, agents or contractors, relating to the Licensee Conduits transferred to WAA. This provision applies only to events that occur after the date the conduit is transferred to the WAA.
- 23.3 Licensee shall exercise reasonable care to avoid damaging the facilities of WAA and of others and shall make an immediate report to WAA of the occurrence of any such damage caused by Licensee's employee, agents, or contractors. Licensee agrees to reimburse WAA for all reasonable costs plus a 20% emergency administrative fee incurred by WAA for the physical repair of such facilities damaged by Licensee.
- 23.4 Licensee shall indemnify, protect and hold harmless WAA and the City of Wichita, its directors, officers, employees and agents and WAA's other Licensees from and against any and all claims, demands, causes of action, damages and costs, including reasonable attorney's fees through appeals incurred by WAA, the City of Wichita and WAA's other Licensees as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating Conduits or Duct Banks. However, Licensee shall not be liable under this Agreement to WAA's other Licensees for any interruption of such Licensees' service or for interference with the operation of such Licensees' facilities, or for any special, indirect, or consequential damages arising in any manner, including Licensee's negligence, out of the use of Conduits or Duct Banks or Licensee's actions or omissions in regard thereto
- 23.5 The Licensee shall indemnify, protect and hold harmless WAA and the City of Wichita, its directors, officers, employees and agents and WAA's other Licensees from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals, for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the rearrangement, maintenance, presence, use or removal of Licensee's facilities by Licensee, its employees, agents or contractors, or by their proximity to the facilities of all parties placed in Conduits or Duct Banks, or by any act or omission of the Licensee's employees, agents or contractors in the vicinity of WAA's Conduits or Duct Banks or otherwise.
- 23.6 Each party shall promptly advise the other party of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the maintenance, repair, replacement, presence, use or removal of the Licensee's facilities. Each party shall promptly notify the other party in writing of any suits or causes of action which might



involve the notified party and upon the request of the notified party, copies of all relevant accident reports and statements made to the notifying party's insurer by the notifying party or other shall be furnished promptly to the notified party.

- 23.7 LICENSEE ACKNOWLEDGES AND AGREES THAT WAA DOES NOT WARRANT THE CONDITION OR SAFETY OF WAA'S CONDUITS, DUCT BANKS OR THE PREMISES SURROUNDING THE SAME, LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF THE CONDUITS, DUCT BANKS AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, EXCEPT TO THE EXTENT ANY SUCH DAMAGE, INJURY OR LOSS IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACT OF WAA.
- 23.8 By executing this Agreement, Licensee warrants that it has acquainted or will fully acquaint itself and its employees and/or contractors or agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions pending the executing of such work.
- 23.9 WAA MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO WAA'S CONDUITS, DUCT BANKS OR OTHER FACILITIES ALL OF WHICH ARE HEREBY DISCLAIMED AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 23.10 LICENSEE MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO LICENSEE'S CONDUITS TRANSFERRED TO WAA, ALL OF WHICH ARE HEREBY DISCLAIMED AND LICENSEE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 23.11 WAA shall indemnify Licensee from any claims by third parties and expenses (including legal fees and court costs through appeals) respecting damage to tangible property, personal injury or death caused by WAA's negligence or willful misconduct.
- 23.12 Notwithstanding any other provision hereof (other than the parties' obligation to indemnify each other), neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including, without limitation, damages for lost profits, lost revenues, taxes levied on income, or the cost of purchasing replacement services) arising out of the performance or failure to perform under this Agreement or any License. Nothing in this Agreement shall be construed as limiting the liability of either party for personal injury or death resulting from the negligence of a party or its employees.

## **24.0 AUTHORIZATION NOT EXCLUSIVE**

- 24.1 Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. WAA shall have the right to grant, renew and extend rights and privileges to others not party to this License Agreement, by contract or otherwise, to use any Conduits or Duct Banks covered by this License Agreement and Licensee's rights hereunder; provided that any such rights or privileges of others do not unreasonably or materially interfere with the Licensee's rights under this Agreement..

## **25.0 ASSIGNMENT OF RIGHTS**

- 25.1 Licensee shall not assign or transfer this License Agreement or any License or any right or authorization granted under this License Agreement and this License Agreement shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of WAA. WAA shall not unreasonably withhold such consent. Nothing contained in this Section 25 shall be deemed or construed to prohibit Licensee from leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements with Licensee's customers respecting the Licensee's facilities installed in the Conduits or Duct Banks. Notwithstanding the foregoing, Licensee may assign this Agreement without WAA's consent (i) to any corporation or other entity that controls, is controlled by or is under common control with Licensee; (ii) to any corporation or other entity resulting from a merger, acquisition, consolidation or reorganization of or with Licensee; or (iii) in connection with the sale of all or substantially all of the assets of Licensee.
- 25.2 In the event such consent or consents are granted by WAA, then the provisions of this License Agreement shall apply to and bind the successors and assigns of the Licensee.

## **26.0 FAILURE TO ENFORCE**

- 26.1 Failure of WAA to enforce or insist upon compliance with any of the terms or conditions of this License Agreement or to give notice or declare this License Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this License Agreement, but the same shall be and remain at all times in full force and effect.

## **27.0 SUPERSEDURE OF PREVIOUS LICENSE AGREEMENT(S)**

- 27.1 This License Agreement supersedes all previous license agreements, easements, rights-of-way, whether written or oral, between WAA and Licensee

for Licensee's Communications Facilities in Conduits or Duct Banks within the Airport Premises covered by this License Agreement; and there are no other provisions, terms or conditions to this License Agreement except as expressed herein. All currently effective Licenses heretofore granted pursuant to such previous License Agreements shall be subject to the terms and conditions of this License Agreement.

- 27.2 This License Agreement shall not affect the rights, obligations or fees imposed by any other governmental entity with jurisdiction over the Licensee.

## **28.0 AUTHORIZATIONS**

- 28.1 Licensee represents and warrants that it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Licensee warrants that it has full power and authority to execute and deliver this License Agreement and to perform its obligations hereunder.

## **29.0 NOTIFICATIONS**

- 29.1 Each party hereby designates the employees named below as their single point of contact for any and all purposes of this License Agreement, including, but not limited to processing Licenses and applications and providing records and information. Each party may at any time designate a new point of contact by giving written notice of such change.

| LICENSEE         |                                |   |
|------------------|--------------------------------|---|
|                  | Legal                          | Operational   |
| Contact          | Legal Department               | Network Real Estate Administration                          |
| Title            | N/A                            | N/A   |
| Company          | New Cingular Wireless PCS, LLC | New Cingular Wireless PCS, LLC                              |
| Address          | 15 Midland Avenue              | 12555 Cingular Way, Suite 1300                              |
| City, State, Zip | Paramus, NJ 07652              | Alpharetta, GA 30004  |
| Telephone        | N/A                            | Eric Webb<br>314-984-5151 (office)<br>314-605-0805 (mobile) |
| Facsimile        | N/A                            | Eric Webb<br>314-821-1727                                   |
| WAA              |                                |   |
|                  | Legal                          | Operational   |
| Contact          | Victor D. White                | John Oswald   |
| Title            | Director of Airports           | Engineering and Planning Manager                            |
| Company          | Wichita Airport Authority      | Wichita Airport Authority                                   |
| Address          | 2173 Air Cargo Road            | 2173 Air Cargo Road   |
| City, State, Zip | Wichita, Kansas 67209          | Wichita, Kansas 67209                                       |
| Telephone        | 316-946-4700                   | 316-946-4715  |
| Facsimile        | 316-946-4793                   | 316-946-1898  |

### 30.0 FORCE MAJEURE

- 30.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligations under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying party shall perform its obligations at a performance level no less than that which it uses for its own operations.

### 31.0 NONDISCLOSURE AGREEMENT

- 31.1 During the term of this Agreement it may be necessary for the parties to provide to each other certain information considered proprietary or confidential. The

receiving party shall protect such information of the disclosing party from whatever source from distribution, disclosure, or dissemination to anyone except employees of the receiving party with a need to know such information in conjunction with the provision of Services hereunder, except as authorized herein or as otherwise authorized in writing. All such information shall be in writing or other tangible form and clearly marked with a confidential or proprietary legend.

Licensee acknowledges and understands that the obligations of the WAA are subject to the provisions of the Kansas Open Records Act (K.S.A. 45-215, et. Seq.) hereinafter the Act. Accordingly, any confidential information that Licensee discloses to the WAA in connection with this Agreement will be protected by the WAA to the extent that the WAA will take all reasonable and appropriate steps to prevent such confidential information from being deemed an open record under the Act.

31.2 The receiving party will not have an obligation to protect any of the disclosing party's information which:

31.2.1 is made publicly available by the disclosing party or lawfully by a nonparty to this agreement; or

31.2.2 is lawfully obtained by the receiving party from any source other than the disclosing party; or

31.2.3 is previously known to the receiving party without an obligation to keep it confidential; or

31.2.4 is released by the disclosing party in writing; or

31.2.5 is released by the receiving party pursuant to any valid subpoena issued in connection with any legal action or administrative proceedings; however, notice of subpoena shall immediately be given to the other party. The receiving party will only make copies of the information received from the disclosing party as are necessary for its use under the terms hereof, and each such copy will be marked with the same proprietary notices as appear on the originals. The receiving party agrees not to identify the disclosing party or any other owner of information disclosed hereunder in any advertising or publicity without the prior written permission of the disclosing party.

## **32.0 NON-DISCRIMINATION EEO/AAP**

32.1 The Licensee agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry in

its operations or services, and its use or occupancy of property under this Agreement. The Licensee agrees to comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq.; the Code of the City of Wichita Section 2.12.900; and laws, regulations or amendments as may be promulgated thereunder.

### **33.0 NON-ARBITRATION**

- 33.1 Notwithstanding anything to the contrary contained in this Agreement, the WAA shall not be subject to arbitration and any clause relating to arbitration contained in this Agreement shall be null and void.

### **34.0 KANSAS LAW TO GOVERN**

- 34.1 This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement in duplicate on the day and year written above.

WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By\_\_\_\_\_

Carl Brewer, President

NEW CINGULAR WIRELESS PCS, LLC  
A Delaware limited liability company

BY: AT&T Mobility Corporation, Manager

By\_\_\_\_\_

Title\_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

\_\_\_\_\_  
Application Number (to be assigned by WAA)

**WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE**

\_\_\_\_\_  
*Company Name of Applicant*

\_\_\_\_\_  
*Application Date*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Applicant Contact Person*

\_\_\_\_\_  
*City, State, ZIP*

\_\_\_\_\_  
*Contact Telephone Number*

In accordance with the terms and conditions of the License Agreement between the Wichita Airport Authority (WAA) and \_\_\_\_\_ (*Applicant*), dated \_\_\_\_\_, 20\_\_\_\_, application is hereby made for a non-exclusive license to occupy the conduit system as shown on the Conduit System Diagram, Conduit Cable Detail Listing, Conduit Equipment Detail Listing and Construction Schedule pages of this Application Form. A license duration of \_\_\_\_\_ months is requested.

Applicant hereby requests WAA to provide an estimate of the costs to complete the required Pre-License Work.

\_\_\_\_\_  
*Authorized Applicant Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

***Note: Two signed copies of Application are required for application.***

\_\_\_\_\_  
For WAA use only

\_\_\_\_\_  
*Application Received By*

\_\_\_\_\_  
*Date Received*



\_\_\_\_\_  
Application Number (to be assigned by WAA)

**WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE  
CONDUIT SYSTEM DIAGRAM**

\_\_\_\_\_  
*Company Name of Applicant*

\_\_\_\_\_  
*Application Date*

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Application Number (to be assigned by WAA)

**WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE  
CONDUIT SYSTEM DIAGRAM – SAMPLE**

**WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE  
CABLE DETAIL LISTING**

\_\_\_\_\_  
*Company Name of Applicant*

\_\_\_\_\_  
*Application Date*

| DESCRIPTION OF CABLE TO OCCUPY CONDUIT |                       |                                   |                                 |           |                      |                             |           |  |                       |
|--|-----------------------|-----------------------------------|---------------------------------|-----------|----------------------|-----------------------------|-----------|--|-----------------------|
| Cable Designation<br>(a)               | O.D.<br>Inches<br>(b) | Wt.<br>Lbs.<br>Per<br>Foot<br>(c) | Metallic<br>Sheath or<br>Shield |           | Type of Cable<br>(e) | Max<br>Voltage To<br>Ground |           | Max<br>Current in<br>any<br>Conductor<br>(g) | Type of Jacket<br>(h) |
|  |                       |                                   | Yes<br>(d)                      | No<br>(d) |                      | AC<br>(f)                   | DC<br>(f) |  |                       |
| 1                                      |                       |                                   |                                 |           |                      |                             |           |  |                       |
| 2                                      |                       |                                   |                                 |           |                      |                             |           |  |                       |
| 3                                      |                       |                                   |                                 |           |                      |                             |           |  |                       |
| 4                                      |                       |                                   |                                 |           |                      |                             |           |  |                       |
| 5                                      |                       |                                   |                                 |           |                      |                             |           |  |                       |
| 6                                      |                       |                                   |                                 |           |                      |                             |           |  |                       |

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- (a) **Cable Designation:** Assign letter, alphabetically, to each different type of cable to be installed.
- (b) **O. D. (Inches):** Outside diameter of cable.
- (c) **WT. Lbs. per foot:** Self-explanatory.
- (d) **Metallic Sheath Or Shield:** Self-explanatory.
- (e) **Type of Cable:** If coaxial cable, show number of tubes.
- (f) **Maximum Voltage to Ground:** Self-explanatory.
- (g) **Maximum Current in any Conductor:** Indicate voltage and amperage.
- (h) **Type of Jacket:** Enter the type of material of the outer jacket or sheath (polyethylene, PVC, etc.)

WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE  
CONDUIT EQUIPMENT DETAIL LISTING

Company Name of Applicant

Application Date

| EQUIPMENT HOUSINGS TO BE PLACED IN MANHOLES |  |      |  |        |  |       |  |       |        |
|---|--|------|--|--------|--|-------|--|-------|--------|
| Manhole Location                            |  | Type |  | Height |  | Width |  | Depth | Weight |

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**WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE  
CONSTRUCTION SCHEDULE**

\_\_\_\_\_  
*Company Name of Applicant*

\_\_\_\_\_  
*Application Date*

\_\_\_\_\_  
*Manager Responsible for Construction*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Manager Responsible for Construction  
Telephone Number*

\_\_\_\_\_  
*City, State, ZIP*

\_\_\_\_\_  
*Company Name of Primary Contractor*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Primary Contractor Contact Person*

\_\_\_\_\_  
*City, State, ZIP*

\_\_\_\_\_  
*Primary Contractor Telephone Number*

\_\_\_\_\_  
*Company Name of Primary Sub-contractor*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Primary Sub-contractor Contact Person*

\_\_\_\_\_  
*City, State, ZIP*

\_\_\_\_\_  
*Primary Sub-contractor Telephone Number*

Application Number (to be assigned by WAA)

WICHITA AIRPORT AUTHORITY  
CONDUIT AND DUCT BANK USE  
APPLICATION FOR CONDUIT OCCUPANCY LICENSE  
CONSTRUCTION SCHEDULE

Company Name of Applicant

Application Date

Proposed Construction Start Date

Proposed Construction Completion Date

| PROPOSED CONSTRUCTION SCHEDULE MILESTONES |  |            |                 |
|---|--|------------|-----------------|
| Task                                      |  | Start Date | Completion Date |
|   |  |            |                 |

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## **SCHEDULE 8**

### **Other Users**

Any tenant, operator, permittee or entity doing business on Wichita Mid-Continent Airport is subject to the defined fees and charges, as applicable. The Wichita Airport Authority establishes these fees and charges as the standard but reserves the right to vary from the published fees and charges in an agreement as negotiations may dictate. Other fees may apply based on the nature of service provided.

### **AIRPORT FEES AND CHARGES**

|   |                               |
|---|-------------------------------|
| Building Rental   | FMV appraisal                 |
| Land Rental – Central Terminal Area   | \$ .3557/s.f.                 |
| • Escalates at 5% annually.   |                               |
| Land Rental – Other   | \$ .1982/s.f.                 |
| • Escalates at 5% every five years. Next adjustment will be 1/1/2013.   |                               |
| Traversed Property  | \$ .1982/s.f.                 |
| • Escalates at 5% every five years. Next adjustment will be 1/1/2013.   |                               |
| Off-Airport Operator Commission<br>(including, but not limited to, parking operators and rental car agencies)           | 9% of gross receipts          |
| On-Airport Operator Commission  | 10% of gross receipts         |
| Ground Handling Commission<br>(does not apply if handler is a Signatory Passenger Air Carrier as defined in Schedule 1) | 5% of gross receipts          |
| Conduit Occupancy Fee   | \$456.00/year/facility access |
| Commercial Use and Operating Permit   | \$100.00/year                 |
| Taxicab Permit  | \$100.00/month                |
| Airport Limousine Permit  | \$50.00/month                 |
| Self Fueling Facilities Flowage Fee   | \$0.15/gallon                 |
| Self Fueling Permit   | \$100.00/year                 |